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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

No. ~~269~~ 32

THE WILLAMETTE WOOLEN MANUFACTURING COMPANY, APPELLANT,

vs.

THE BANK OF BRITISH COLUMBIA.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF OREGON.

FILED AUGUST 31, 1883.

SUPREME COURT OF THE UNITED STATES.

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a *Appeal from U. S. Circuit Court for Oregon.*

[Seal United States Circuit Court, Oregon.]

BANK OF BRITISH COLUMBIA
vs.
THE WILLAMETTE WOOLEN MANUFACTURING COMPANY.

1 *Bill of Complaint on Foreclosure of Mortgage.*

In the Circuit Court of the United States for the District of Oregon.

THE BANK OF BRITISH COLUMBIA, Plaintiff,
vs.
THE WILLAMETTE WOOLEN MANUFACTURING COMPANY *et al.*, Defendant-.

To the honorable the judge of the circuit court of the United States for the district of Oregon:

Humbly complaining, your orator, The Bank of British Columbia, shews unto your honours:

That it is a foreign corporation duly incorporated under the laws of Great Britain.

That it has duly complied with all the laws of the State of Oregon regulating the manner in which foreign corporations may do business therein, and that during all the times hereinafter mentioned it hath had and now hath full right and authority to transact and carry on business in said State of Oregon.

That part of its said business is to make loans of money upon the security of either real or personal estate, and that it does
2 business at the city of Portland, in said State.

That the defendant corporation is a corporation duly incorporated under the laws of the Territory of Oregon, doing business and with its principal office at the city of Salem, Marion county, State of Oregon.

Further complaining, your humble orator shews unto your honour that on a certain day, to wit, the twenty-third day of August, A. D. 1875, at the city of Salem, county of Marion, in the State of Oregon, the said defendant made its certain promissory notes, all bearing dates on that day, in the words and figures following, to wit:

"$10,000.00. On the 1st day of August, A. D. 1876, The Willamette Woolen Manufacturing Company hereby promises, for value received, without grace, to pay unto The Bank of British Columbia ten thousand dollars in gold coin of the United States, with interest thereon in like gold coin at the rate of seven per cent. per annum from the 1st day of August, 1875, interest payable quarterly.

"Salem, Oregon, Aug. 23, '75.

"[Seal of W. W. M. Co.]

"(Signed) W. W. M'F'G CO.,
"By JOHN F. MILLER, *President.*

"S. R. IRWIN, *Sec'ty.*

3 "$15,000.00. On the 1st day of August, A. D. 1877, The Willamette Woolen Manufacturing Company hereby promises, for value received, without grace, to pay unto The Bank of British Columbia fifteen thousand dollars in gold coin of the United States, with interest thereon in like gold coin at the rate of seven per cent. per annum from the 1st day of August, 1875, interest payable quarterly.

"Salem, Oregon, 23 Aug., '75.

"[Seal of W. W. M. Co.]

"(Signed) W. W. M'F'G CO.,

"By JOHN F. MILLER, *President.*

"By S. R. IRWIN, *Sec't'y.*

"$15,000.00. On the 1st day of August, 1878, The Willamette Woolen Manufacturing Company hereby promises, for value received, without grace, to pay unto The Bank of British Columbia fifteen thousand dollars in gold coin of the United States, with interest thereon in like gold coin at the rate of seven per cent. per annum from the 1st day of August, 1875, interest payable quarterly.

"Salem, Oregon, 23 Aug., '75.

"[Seal of W. W. M. Co.]

"(Signed) W. W. M'F'G CO.,

"By JOHN F MILLER, *President.*

"By S. R. IRWIN, *Sec't'y.*

4 "$20,000.00. On the 1st day of August, 1879, The Willamette Woolen Manufacturing Company hereby promises, for value received, to pay, without grace, unto The Bank of British Columbia twenty thousand dollars in gold coin of the United States, with interest thereon in like gold coin at the rate of seven per cent. per annum from the 1st day of August, 1875, interest payable quarterly.

"Salem, Oregon, Aug. 23, '75.

"[Seal of W. W. M. Co.]

"(Signed) W. W. M'F'G CO.,

"By JOHN F. MILLER, *President.*

"By S. R. IRWIN, *Sec't'y.*"

At the same time the defendant procured John F. Miller and William C. Griswold to make and execute their three notes, all bearing dates on that day, in the words and figures following, to wit:

"$8,333.33⅓. Six months from the first day of August, 1875, without grace, we do, for value received, jointly and severally, promise to pay to The Bank of British Columbia eight thousand three hundred and thirty-three 33⅓-100 dollars in gold coin of the United States, with interest thereon from said 1st of August till pay-

5 ment in like gold coin at the rate of seven per cent. per annum, interest payable quarterly.

"Salem, Oregon, 23 Aug. '75.

"(Signed) JOHN F. MILLER.

"WILLIAM C. GRISWOLD.

"$8,333.33⅓. Nine months from the 1st day of August, 1875, with-

out grace, we do, for value received, jointly and severally, promise to pay to the order of The Bank of British Columbia eight thousand three hundred and thirty-three 33⅓-100 dollars in gold coin of the United States, with interest thereon from the 1st day of August, 1875, till paid in like gold coin at the rate of seven per cent. per annum, interest payable quarterly.

"Salem, Oregon, 23 Aug., '75.

"(Signed) JOHN F. MILLER.
" WILLIAM C. GRISWOLD.

"$8,333.33⅓. Twelve months from the 1st day of August, 1875, without grace, we do, for value received, jointly and severally, promise to pay to the order of The Bank of British Columbia eight thousand three hundred and thirty-three 33⅓-100 dollars in gold coin of the United States, with interest thereon from the 1st day of August, 1875, till paid in like gold coin at the rate of seven per cent. per annum, interest payable quarterly.

"Salem, Oregon, 23 Aug., 1875.

"(Signed) JOHN F. MILLER.
"WILLIAM C. GRISWOLD."

6 That these three notes, amounting to twenty-five thousand dollars, together with the four previously-described notes, amounting to sixty thousand dollars, making in all seven notes, amounting to eighty-five thousand dollars, were then and there delivered to said plaintiff.

Further complaining, your humble orator shews unto your honour:

That the said defendant, The Willamette Woolen Manufacturing Company, to secure the payment of said principal sums and interest thereon, as mentioned in said promissory notes, according to the tenor thereof did, at the same time and place, execute under the hands of its president, John F. Miller, and of its secretary, Sam. R. Irwin, and its corporate seal, and deliver to the said plaintiff a certain mortgage, bearing date on the 24th day of August, 1875, and conditioned for the payment of the said sum of eighty-five thousand (85,000) dollars, gold coin of the United States, and interest thereon at the rate and at the time and in the manner specified in said mortgage and according to the condition thereof; which said mortgage was duly acknowledged and certified, so as to entitle it to be
7 recorded, and the same was afterwards, to wit, on the thirty-first day of August, A. D. 1875, duly recorded in the office of the county recorder of the county of Marion, State of Oregon, in liber 7 of Mortgages, pages 613–619; a copy of which said mortgage, with the indorsements thereon, is herewith set forth and made a part of this bill of complaint, to wit:

This indenture, made and entered into this 24th day of August, in the year of our Lord eighteen hundred and seventy-five, between the "Willamette Woolen Manufacturing Company," a corporation created by and under a special act of the Legislative Assembly of the then Territory of Oregon, passed the 17th of December, 1856, entitled "An act to incorporate the Willamette Woolen Manufact-

uring Company," the party of the first part, and the Bank of British Columbia, a foreign corporation, doing business in the State of Oregon, and fully empowered and authorized in all respects under and by the laws of the State aforesaid to do and transact business herein, with its principal place of business in the city of Portland, county of Multnomah, and State aforesaid, party of the second
8 part, witnesseth: That whereas on this day, but prior to the making and ensealing hereof, the said "The Willamette Woolen Manufacturing Company" hath, at a meeting of its board of directors, regularly and legally called, directed the making of four several promissory notes by said corporation, the aggregate amount of which is sixty thousand dollars, and hath approved the making of three other promissory notes by John F. Miller and William C. Griswold, in amount aggregate twenty-five thousand dollars; and whereas further at said meeting of said directors the making, ensealing, and delivery of this indenture was especially and partiularly authorized and the same directed to be done in manner and form as the same is herein done, and for the purpose of securing the payment of the promissory notes aforesaid, all of which shall be hereinafter herein set forth, the said notes having been made and this mortgage as well to secure unto said Bank of British Columbia the true payment of eighty-five thousand dollars in gold coin, loaned by it to said party of the first part, wherefore, in consideration of the premises, the party of
9 the first part, for said consideration moving from said party of the second part, and for the further consideration of eighty-five thousand dollars in gold coin in hand paid to said party of the first part by the party of the second part, the receipt whereof is hereby duly acknowledged, doth hereby grant, bargain, sell, assign, transfer, set over, and convey unto the party of the second part, its assigns, successors, and representatives, all the following real property lying and being situate in the county of Marion and State of Oregon, more particularly described as follows, to wit: That parcel of realty upon which the mill property of the party of the first part now stands, described as follows: Beginning at point in the west side of Broadway, between North Salem and Salem, said point being (334) three hundred and thirty-four feet southerly from the south side of Mill street, in North Salem, and (169) one hundred and sixty-nine feet southerly from the southeast corner of Hutton's lot, running thence north 71° west 4.94 chains; thence north 19° east 58 links; thence north 71° west 64½ links; thence south 49° 41′ west,
10 about 6.94 chains to the point of intersection with the northeast boundary line of the Wilson land claim; thence south 7° 30′ east 4.03 chains to the point of intersection with a line bearing north 71° west, being 2.65 chains in length and the most southerly boundary line in the land conveyed by J. B. McClure and wife to the party of the first part, recorded in book of deeds for Marion county No. 10, page 616, reference to which is hereby made; thence south 71° east 2.65 chains; thence north 49° 40′ east 8.52 chains; thence north 19° east 2.38 chains to the place of beginning; also, all the machinery, tools, implements, utensils, and things whatso-

ever used in or about the factory building situate in said premises or in any way appurtenant thereto or connected therewith, or necessary or convenient to the use of said manufacturing establishment as the same was designed to be and now is used, the design hereof being to convey the entire parcel of realty, together with the tenements and buildings, together with all and singular the machinery of every kind used therein or thereabout.

11 "Also the power to bring water from the Santiam river to any place or places in or near Salem, the same to be brought as far as practicable through the channels or the valley of Mill Creek, and for such purposes may enter upon lands, and also said creek, and do all things proper and suitable for a safe and economical conveyance of water, as aforesaid; also the exclusive right to the hydraulic powers and privileges created by the water from the Santiam river; also all the rights and powers of the said party of the first part in and to the water rights, powers, and privileges obtained under its charter or articles of incorporation, including all rights and property of kindred character acquired by said party of the first part in any way or from any person since the incorporation aforesaid.

"Also all that tract or parcel of realty upon which the party of the first part has now in operation a sash factory, lying and being situate in the county and State aforesaid, more particularly described as follows: Beginning at a point on the east line of Liberty street, in the city of Salem, State aforesaid, two hundred and sixty-four feet northerly from the northwest corner of block No. twenty-six

12 (26), in said city, and running thence at right angles with the said east line of Liberty street in an easterly direction three hundred and forty-six and one-half (346½) feet to the west line of High St., if extended; thence southerly along the west side of High street so extended two hundred and sixty-four (264) feet to the northeast corner of said block No. twenty-six (26); thence easterly at right angles with the last-mentioned line ninety-nine (99) feet to the east line of High street; thence northerly along the east line of High street to the south bank of the mill-race through which the water from Mill Creek is conducted to the sash factory; thence easterly along the south bank of said race to the margin of the water in the pond at the head of said race; thence up the margin of the water in said pond on the south side and by the meanderings thereof to a point where the west line of block sixty-six (66), if extended in a northerly direction, would intersect Mill Creek; thence northerly along said line so extended to the north line of the land claim of the — W. H. Wilson; thence westerly along the said line last mentioned to the east line of Liberty street extended; thence southerly

13 along said street so extended to the place of beginning; together with all and singular the tenements and hereditaments thereunto belonging or in any wise appertaining, and especially the buildings and all the machinery therein used as part thereof, whether permanently attached thereto or otherwise.

"Also all the rights and powers of the said party of the first part in and to the water rights, the water couse, and race in said county,

known as the Mill Creek or Santiam water course, the same which feeds and supplies and furnishes the motive-power for the factory of said party of the first part; also all the water of the said stream of water known as Mill Creek or the Santiam water power, which flows or can flow through the same from the point where said water leaves the Santiam river to the point where the same flows into the Willamette river.

"Also all the powers, privileges, and easements held by the party of the first part under the deeds of Joseph Watt and Sarah Watt, his wife; of John H. Moore and Margaret Moore, his wife; of John D. Boon and Martha I. Boon, his wife; of James T. Linch and Mary M. Linch, his wife; of Gabriel Brown
14 and Elizabeth Brown, his wife; of Henry Foster and Mary Foster, his wife; of Stephen Porter and Susan Porter, his wife; of A. B. Walker, Alvin F. Walker, and Elepha Walker, his wife; also all the rights and easements of every kind and description to or in the waters of Mill Creek and the Santiam river, together with all the rights of way now owned by said party of the first part, as appurtenant to or necessary to the use or enjoyment of said rights, privileges, and easements in the water aforesaid, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining unto the party of the second part, its successors, assigns, or legal representatives, to have and to hold forever.

"Nevertheless, this conveyance is intended to operate as a mortgage to secure the true payment of the four following promissory notes made by the said party of the first part, and the three following promissory notes made by John F. Miller and William C. Griswold, the same having been made for the eighty-five thousand dollars hereinbefore referred to, copies of said notes now here being inserted.

15 Then follow the copies of said seven notes, which said copies have already been set forth in this bill of complaint:

"Now, if the aforesaid promissory notes are, or shall be, all well and truly paid, principal and interest, when due and payable, according to their tenor and effect, then these presents shall be void. But if default be made in the payment of either of said notes, as in the payment of interest upon either of them, when the same (either the notes or the interest) shall become due and payable, then, in the event of either such default, the party of the second part may enter into possession of said described premises and sell the same in the manner prescribed by law, and out of the proceeds arising from said sale said party of the second part shall retain an amount sufficient to pay said promissory notes, shall pay of the costs of sale, and shall then return the residue, if any, to the party of the first part. And the said party of the first part hereby covenants and agrees to, and with the parties of the second part, *to* pay unto said party of the second part the said sum of money and interest described in
16 the first four promissory notes hereinbefore set out.

"And the party of the first part covenants and agrees that

the party of the second part may, at the expense of said party of the first part, take and keep upon the property herein conveyed a policy or policies of insurance equal in amount to the policies now held by the party of the second part; and that as the principal of the indebtedness represented by the four promissory notes is reduced that said party of the second part may always keep such policy or policies of insurance in amount sufficient to equal the current indebtedness of the party of the first part to the party of the second part as upon the notes aforesaid, and in the event the property aforesaid should be destroyed by fire, then, whatever amount of money shall be received by the party of the second part upon any policy or any policies of insurance so held by it as aforesaid, shall be applied as a credit upon the amount then due to said party of the second part by said party of the first part as by the four promissory notes aforesaid, and whatever money shall be at any time received by said party of the
17 second part, by reason of any policy of insurance against fire, shall so much reduce the indebtedness of the party of the first part to the party of the second part, and any of said notes, whether due or not, if so paid as aforesaid, shall be at once cancelled and returned.

In witness whereof the said party of the first part has caused its corporate seal to be affixed to these presents and the same to be signed by its president and secretary, by resolution of the board of directors thereof, held at the city of Salem, in Oregon, the day and year first above written.

[SEAL OF W. W. MAN'F. CO.]

(S'g'd) WILLAMETTE WOOLEN MANUF'Y CO.
By JOHN F. MILLER, *Pres.*
SAM. R. IRWIN, *Sec'y.*

Signed, sealed and delivered in presence of us witnesses:
JOHN J. SHAW.
W. C. GRISWOLD.
RUFUS MALLORY.

STATE OF OREGON, *county of Marion:*

Be it remembered that before me, the undersigned, a notary public in and for the State of Oregon, on the 23d day of August, A. D. 1875, personally appeared John F. Miller, president of the
18 Willamette Woolen Manufacturing Company and Samuel R. Irwin, secretary of the Willamette Woolen Manufacturing Company, whose names are subscribed to the foregoing instrument as parties thereto, personally known to me to be the identical persons described in, and who executed the said instrument; and they acknowledged to me, severally, that he, John F. Miller, as president of said company, and he, the said Samuel R. Irwin, as secretary thereof, executed the said instrument as and for the act and deed of the Willamette Woolen Manufacturing Company, freely and voluntarily, and for the purpose therein mentioned. And the said John F. Miller, being by me duly sworn, did say that he is the president of the Willamette Woolen Manufacturing Company, and resides in

25 DISTRICT OF OREGON, *ss:*

In obedience to the command of the within writ, I have served the same upon the therein named "The Willamette Woolen Manufacturing Company," Secretary James Young, by exhibiting same to the said James Young and by delivering to him, personally, a true copy thereof, duly certified to by me as U. S. marshal of said district, together with a copy of the complaint in the within suit, duly certified to by the plaintiff's attorney, at Salem, in said district, on the 9th day of May, A. D. 1881.

(S'g'd) EDWARD S. KERNEY,
U. S. Marshal,
By JNO. W. MINTO, *Deputy.*

26 *Subpœna ad Respondendum.*

In the Circuit Court of the United States for the Ninth Judicial Circuit, District of Oregon. In Equity.

THE BANK OF BRITISH COLUMBIA, Complainant,
vs.
THE WILLAMETTE WOOLEN MANUFACTURING COMPANY, Defendant. } No. 745.

The President of the United States of America to The Willamette Woolen Manufacturing Company, Greeting:

You and each of you are hereby commanded that you be and appear in said circuit court of the United States, at the court-room thereof, in the city of Portland, in said district, on the first Monday of June next, which will be the sixth day of June, A. D. 1881, to answer the exigency of a bill of complaint exhibited and filed against you in our said court, wherein The Bank of British Columbia is complainant and you are defendant, and further to do and receive what our said circuit court shall consider in this behalf; and this you are in no wise to omit, under the pains and penalties of what may befall thereon.

And this is to command you, the marshal of said district, or your deputy, to make due service of this our writ of subpœna and to have then and there the same.

Hereof fail not.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of our said circuit court, affixed at Portland, in said district, this 6th day of May, in the year our Lord one thousand eight hundred and eighty-one, and of the Independence of the United States the one hundred and fifth.

[United States Circuit Court, Oregon.]

(S'g'd) R. H. LAMSON, *Clerk,*
By P. LEONARD,
Deputy Clerk.

Memorandum Pursuant to Equity Rule No. 12 *of the Supreme Court of the United States.*

The defendant is to enter his appearance in the above-entitled suit

in the office of the clerk of said court on or before the day at which the above writ is returnable; otherwise the complainant's bill therein may be taken *pro confesso*.

[Endorsed:] No. 745. In the circuit court of the United States for the ninth judicial circuit, district of Oregon. In equity. The Bank of British Columbia *vs.* The Willamette Woolen Manufacturing Company. *Subpœna ad respondendum.* Copy. Returned and filed May 10, 1881. (S'g'd) R. H. Lamson, clerk, by P. Leonard, deputy clerk.

27 And afterwards, to wit, on the 6th day of June, 1881, there was duly filed in said court a precipe for appearance, in words and figures, as follows, to wit:

28 In the Circuit Court of the United States for the District of Oregon.

THE BANK OF BRITISH COLUMBIA, Complainant,
vs.
THE WILLAMETTE WOOLEN MANUFACTURING COMPANY, Defendant.

To R. H. Lamson, clerk of the circuit court of the United States for the district of Oregon:

Please enter the appearance of undersigned as solicitor for the defendant above named, The Willamette Woolen Manufacturing Company.

GEO. H. BURNETT,
Solicitor for Defendant.

Endorsed: "Filed June 6, 1881. R. H. Lamson, clerk, by P. Leonard, deputy clerk."

29 And afterwards, to wit, on the 6th day of June, 1881, the following proceedings were had in said case, to wit:

30 In the Circuit Court of the United States for the District of Oregon.

THE BANK OF BRITISH COLUMBIA
vs.
THE WILLAMETTE WOOLEN MANUFACLURING COMPANY. } No. 745.

JUNE 6, 1881.

Now at this day upon precept filed, it is ordered that the apearance of Geo. H. Burnett, as solicitor for the defendant above named, be and the same is hereby entered.

31 And afterwards, to wit, on the 2d day of July, 1881, there was duly filed in said court an answer in words and figures as follows, to wit:

32 In the Circuit Court of the United States for the District of Oregon.

THE BANK OF BRITISH COLUMBIA, Plaintiff,
vs.
THE WILLAMETTE WOOLEN MANUFACTURING COMPANY, Defendant.

To the honorable the judge of the circuit court of the United States for the district of Oregon:

The defendant above named, The Willamette Woolen Manufacturing Company, answering the bill of complaint of the plaintiff, The Bank of British Columbia above named, denies that the defendant corporation is a corporation duly or at all incorporated under the laws of the State of Oregon, and denies that there are no prior or subsequent incumbrances or liens either by judgment or otherwise in favor of any other person than said plaintiff corporation upon the property described in the mortgage set out in said bill of complaint.

And for a further defense and plea to said bill of complaint said defendant, the Willamette Woolen Manufacturing Company alleges that it is now and continuously for more than twenty years next last past has been incorporated under and by virtue of an act of the Legislative Assembly of the Territory of Oregon,
33 passed December 17th, 1856, and entitled "An act to incorporate the Willamette Woolen Manufacturing Company. That the fifth section of said act provides as follows, viz:

"SEC. 5. Said corporation shall have power to bring water from the Santiam river to any place or places in or near Salem, to be brought as far as practi-ble through the channel or valley of Mill Creek, and for such purpose may enter upon lands and also said creek, and do all things proper and suitable for a safe, direct, and economical conveyance of water as aforesaid, but said corporation shall do no unnecessary injury to private property, and shall be answerable in damages to any person whose property is injured by its acts."

That the rights and powers enumerated in said section five of said act and thereby conferred upon defendant constitute the personal and exclusive franchise of defendant as such corporation, and that said mortgage mentioned in plaintiff's bill of complaint includes said franchise and of right ought by this honorable court to be declared null and void and of no effect so far as the same includes said franchise.

That it is necessary to the use, enjoyment, and maintenance of defendant's said franchise that defendant shall have and re-
34 tain the exclusive use and enjoyment of all the property mentioned and described in plaintiff's mortgage, set out in said bill of complaint, which relates to the power to bring water from said Santiam river to said Salem.

Wherefore the defendant, the Willamette Woolen Manufacturing Company, prays a decree of this honorable court that said mortgage

of plaintiff be declared null and void so far as it attempts to create a lien upon defendants' said franchise, or upon anything whatsoever necessarily connected with or related to the use or enjoyment thereof; that plaintiff's bill of complaint be dismissed as to defendants' said franchise and all other property included in said mortgage, and necessary to the use and enjoyment of said franchise, and for the costs and disbursements of this suit by defendants expended.

GEO. H. BURNETT,
Attorney for Defendants.

UNITED STATES OF AMERICA:

DISTRICT OF OREGON, } ss:
County of Marion. }

I, James Young, being first duly sworn, say that I am the duly elected, qualified, and acting secretary of the defendant
35 corporation, the Willamette Woolen Manufacturing Company, named in and making the foregoing answer, and that said answer is true in point of fact, and is not interposed for delay.

JAMES YOUNG.

Subscribed and sworn to before me the second day of July, A. D. 1881.

GEO. H. BURNETT,
Notary Public for the State of Oregon.

UNITED STATES OF AMERICA, } ss:
District and State of Oregon, }

I, Geo. H. Burnett, an attorney of the circuit court of the United States of America for the district of Oregon, and of counsel for the defendant corporation, the Willamette Woolen Manufacturing Company, named as defendant in and making the foregoing answer, do hereby certify that I have examined the plea set up in said answer, and that, in my opinion, said plea is well founded in point of law.

GEO. H. BURNETT,
Of Counsel for the Defendant,
The Willamette Woolen Manufacturing Company.

Indorsed: "Answer. Filed July 2nd, 1881. R. H. Lamson, clerk."

36 And afterwards, to wit, on the 30th day of July, 1881, there was duly filed in said court exceptions to answer to the bill for insufficiency, in words and figures as follows, to wit:

37 *Exceptions taken by the Above-Named Plaintiff to the Answer of the Defendant for Insufficiency.*

In the Circuit Court of the United States for the District of Oregon.
In Chancery.

THE BANK OF BRITISH COLUMBIA, Plaintiff,
vs.
THE WILLAMETTE WOOLEN MANUFACTURING COMPANY, Defendant.

First exception. For that the said defendant has not in and by its

said answer, according to the best of its knowledge, remembrance, information, and belief, answered and set forth whether the plaintiff was and is a foreign corporation, duly incorporated and authorized under the laws of the State of Oregon to do business therein.

Second exception. For that the said defendant has not in and by its said answer, according to the best of its knowledge, remembrance, information, and belief, answered and set forth whether there are other prior or subsequent incumbrancers or lien-holders upon the property in the bill and mortgage mentioned, or who such incumbrancers or lien-holders are.

Third exception. For that the said defendant has not in and by its said answer, according to the best of its knowledge, remembrance, information, and belief, answered and [set] forth how or in what manner the mortgage to plaintiff by defendant of the right or franchise to carry water from the Santiam river to or near Salem is, or ought to be, null or void, or of no effect.

In all or some of which particulars the said plaintiff is advised that the said answer of the defendant is evasive and insufficient, and ought to be amended, and humbly prays the same may be amended accordingly.

EFFINGER & BOURNE,
Att'ys and Counsel for Plaintiff.

Endorsed: "Exceptions to answer to the bill for insufficieney. Filed July 30, 1881. R. H. Lamson, clerk.

38 And afterwards, to wit, on Monday, the 5 day of September, 1881, the same being the 77th judicial day of the regular April term of said court—present, the Honorable Matthew P. Deady, United States district judge, presiding—the following proceedings were had in said case, to wit:

39 In the Circuit Court of the United States for the District of Oregon. September 5, 1881.

THE BANK OF BRITISH COLUMBIA
vs.
THE WALLAMET WOOLEN MANUFACTURING COMPANY. } No. 745.

Now at this day comes the complainant, by Mr. Jonathan Bourne, Jr., of counsel, and on his motion it is ordered that said complainant be, and he is hereby, allowed to file a supplemental bill herein.

(Signed) DEADY, J.

40 And afterwards, to wit, on the 6 day of September, 1881, there was duly filed in said court a supplemental bill, in words and figures as follows, to wit:

41 *Supplemental Bill.*

That the defendants, W. C. Griswold, C. A. Reed, Thomas Smith, Seneca Smith, W. Lair Hill, H. Y. Thompson, and Geo. H. Durham, who are partners under the name of Hill, Durham & Thompson; W. S. Ladd and A. Bush, who are partners under the

name of Ladd and Bush; Andrew Kelly, James W. Nesmith, Thomas A. Mauzey, Ed. Chamberlin, W. G. Woodworth, W. H. Holmes, W. H. Watkinds, and Ben Hayden, all claim to have some interest in and upon said property as purchasers, mortgagees, redemptioners, holders of judgments, or otherwise, but that all of said claims are subsequent to your orator's mortgage and subsequent to the *lein* thereof.

That as your orator is informed, said Griswold and C. R. Reed claim the premises as purchasers; said Thomas Smith, as holder of judgment for $1,029.75 and $173.07 costs; said Seneca Smith, of judgment for $182.50 and $9.25 costs; said Hill, Durham and Thompson, of judgment for $9,365.42 and $37.25 costs; said Ladd & Bush, of judgments for $324.32 and $43.85 costs, and $308.25 and $27.75 costs; said Andrew Kelly, of judgment for $477.80 and $9.75 costs; said J. W. Nesmith, of judgment for $500 and $9.75 costs; said Thomas A. Mauzey, of judgment for $4.90 and $9.75 costs; said E. Chamberlin, of judgment for $151 and $17.25 costs; said
42 W. H. Woodworth, of judgment for $135 32 and $9.75; said W. H. Holmes, of judgment for $500 and $9.75 costs; said Ben. Hayden, of judgment for $400 and $9.75 costs; and said W. H. Watkinds, of judgment for $479 and $55.15 costs; and as a redemptioner, from C. A. Reed, purchaser at a sale by the U. S. marshal upon a writ of *fi. fa.* against the property of defendant, W. C. Griswold.

That all of said lien-holders, as your orator is informed, claim, their liens upon said premises by virtue of judgments recovered against W. C. Griswold, and docketed so as to operate as liens against his, Griswold's, property.

That your orator has not full, exact, or specific information as to said alleged liens other than that all of them are subordinate to your orator's mortgage-lien.

Wherefore, in addition to the prayers to be hereinafter formaliy prayed, your orator now here prays that all of the afore-named parties may be made defendants and required to answer this bill, and to set out particularly their claims upon the said premises, and to show the nature, amount, and character of said claims.

Let the foregoing be inserted in the original bill of complaint just before the last averment beginning:

43 "That there are no prior or subsequent incumbrances or liens, either by judgment or otherwise, &c.," immediately preceding the prayer of the bill.

In the description of the defendant corporation, The Willamette Woolen Manufacturing Company, given on the first page of the original bill of complaint in the suit, insert or read the words, "Territory of Oregon" in the place of "State of Oregon."

EFFINGER AND BOURNE,
Attorneys for Plaintiff.

Indorsed: Filed Sept. 6, 1881. R. H. Lamson, clerk.

44 And afterwards, to wit, on the 14 day of September, 1881, there was duly filed in said court a marshal's return of service of copy of original bill of complaint, with supplemental bill inserted, in words and figures as follows, to wit:

45 *Bill of Complaint on Foreclosure of Mortgage.*

In the Circuit Court of the United States for the District of Oregon.

THE BANK OF BRITISH COLUMBIA, Plaintiff,

vs.

THE WILLAMETTE WOOLEN MANUFACTURING COMPANY *et al.*, Defendants.

To the honorable the judge of the circuit court of the United States for the district of Oregon:

Humbly complaining, your orator, The Bank of British Columbia, shews unto your honours that it is a foreign corporation duly incorporated under the laws of Great Britain.

That it has duly complied with all the laws of the State of Oregon regulating the manner in which a foreign corporation may do business therein, and that during all the time hereinafter mentioned it hath had and now hath full right and authority to transact and carry on business in said State of Oregon.

That part of its said business is to make loans of money
46 upon the security of either real or personal estate, and that it does business in the city of Portland, in said State.

That the defendant corporation is a corporation duly incorporated under the laws of the Territory of Oregon, doing business and with its principal office at the city of Salem, Marion county, State of Oregon.

Further complaining, your humble orator shews unto your honour that on a certain day, to wit, the twenty-third day of August, A. D. 1875, at the city of Salem, county of Marion, in the State of Oregon, the said defendant made its certain promissory notes, all bearing date upon that day, in the words and figures following, to wit:

"$10,000.00. On the 1st day of August, A. D. 1876, The Willamette Woolen Manufacturing Company hereby promises, for value received, without grace, to pay unto The Bank of British Columbia ten thousand dollars in gold coin of the United States, with interest thereon in like gold coin at the rate of seven per cent. per
47 annum from the 1st day of August, 1875, interest payable quarterly.

"Salem, Oregon, Aug. 23, '75.

[Seal W. W. M'f'g Co.]

"(Signed) W. W. M'F'G Co.,
"By JOHN F. MILLER, *President.*

"S. R. IRWIN, *Sec't'y.*

"$15,000.00. On the 1st day of August, 1877, The Willamette

Woolen Manufacturing Company hereby promises, for value received, without grace, to pay unto The Bank of British Columbia fifteen thousand dollars in gold coin of the United States, with interest thereon in like gold coin at the rate of seven per cent. per annum from the 1st day of August, 1875, interest payable quarterly.

"Salem, Oregon, 23 Aug., '75.

[Seal W. W. M. Co.]

"(Signed) W. W. M'F'G CO.,
"By JOHN F. MILLER, *President.*

"By S. R. IRWIN, *Sec't'y.*

"$15,000.00. On the 1st day of August, 1878, The Willamette Woolen Manufacturing Company hereby promises, for value received, without grace, to pay unto The Bank of British Columbia fifteen thousand dollars in gold coin of the United States, with interest thereon in like gold coin at the rate of seven per cent.
48 per annum from the 1st day of August, 1875, interest payable quarterly.

"Salem, Oregon, 23 Aug., '75.

[Seal W. W. M. Co.]

"(Signed) W. W. M'F'G CO.,
"By JOHN F. MILLER, *President.*

"By S. R. IRWIN, *Sec't'y.*

"$20,000.00. On the 1st day of August, 1879, The Willamette Woolen Manufacturing Company promises, for value received, to pay without grace to The Bank of British Columbia twenty thousand dollars in gold coin of the United States, with interest in like gold coin at the rate of seven per cent. per annum from the 1st day of August, 1875, interest payable quarterly.

"Salem, Oregon, 23 Aug., 1875.

[Seal. W. W. M. Co.]

"(Signed) W. W. M'F'G. CO.,
"By JOHN F. MILLER, *President.*

"By S. R. IRWIN, *Sec't'y.*"

At the same time the defendant procured John F. Miller and William C. Griswold to make and execute their three notes, all bearing dates on that day, in the words and figures following, to wit:

49 "$8,333.33⅓. In six months from the 1st day of August, 1875, without grace, we do, for value received, jointly and severally, promise to pay to the order of The Bank of British Columbia eight thousand three hundred and thirty-three 33⅓-100 dollars in gold coin of the United States, with interest thereon from said 1st of August till payment in like gold coin at the rate of seven per cent. per annum, interest payable quarterly.

"Salem, Oregon, 23 Aug., '75.

"(Signed JOHN F. MILLER.
"WILLIAM C. GRISWOLD.

44 And afterwards, to wit, on the 14 day of September, 1881, there was duly filed in said court a marshal's return of service of copy of original bill of complaint, with supplemental bill inserted, in words and figures as follows, to wit:

45 *Bill of Complaint on Foreclosure of Mortgage.*

In the Circuit Court of the United States for the District of Oregon.

THE BANK OF BRITISH COLUMBIA, Plaintiff,

vs.

THE WILLAMETTE WOOLEN MANUFACTURING COMPANY *et al.*, Defendants.

To the honorable the judge of the circuit court of the United States for the district of Oregon:

Humbly complaining, your orator, The Bank of British Columbia, shews unto your honours that it is a foreign corporation duly incorporated under the laws of Great Britain.

That it has duly complied with all the laws of the State of Oregon regulating the manner in which a foreign corporation may do business therein, and that during all the time hereinafter mentioned it hath had and now hath full right and authority to transact and carry on business in said State of Oregon.

That part of its said business is to make loans of money
46 upon the security of either real or personal estate, and that it does business in the city of Portland, in said State.

That the defendant corporation is a corporation duly incorporated under the laws of the Territory of Oregon, doing business and with its principal office at the city of Salem, Marion county, State of Oregon.

Further complaining, your humble orator shews unto your honour that on a certain day, to wit, the twenty-third day of August, A. D. 1875, at the city of Salem, county of Marion, in the State of Oregon, the said defendant made its certain promissory notes, all bearing date upon that day, in the words and figures following, to wit:

"$10,000.00. On the 1st day of August, A. D. 1876, The Willamette Woolen Manufacturing Company hereby promises, for value received, without grace, to pay unto The Bank of British Columbia ten thousand dollars in gold coin of the United States, with interest thereon in like gold coin at the rate of seven per cent. per
47 annum from the 1st day of August, 1875, interest payable quarterly.

"Salem, Oregon, Aug. 23, '75.

[Seal W. W. M'f'g Co.]

"(Signed) W. W. M'F'G Co.,
"By JOHN F. MILLER, *President.*

"S. R. IRWIN, *Sec'l'y.*

"$15,000.00. On the 1st day of August, 1877, The Willamette

Woolen Manufacturing Company hereby promises, for value received, without grace, to pay unto The Bank of British Columbia fifteen thousand dollars in gold coin of the United States, with interest thereon in like gold coin at the rate of seven per cent. per annum from the 1st day of August, 1875, interest payable quarterly.

"Salem, Oregon, 23 Aug., '75.

[Seal W. W. M. Co.]

"(Signed) W. W. M'F'G CO.,

"By JOHN F. MILLER, *President.*

"By S. R. IRWIN, *Sec't'y.*

"$15,000.00. On the 1st day of August, 1878, The Willamette Woolen Manufacturing Company hereby promises, for value received, without grace, to pay unto The Bank of British Columbia fifteen thousand dollars in gold coin of the United States, with interest thereon in like gold coin at the rate of seven per cent.
48 per annum from the 1st day of August, 1875, interest payable quarterly.

"Salem, Oregon, 23 Aug., '75.

[Seal W. W. M. Co.]

"(Signed) W. W. M'F'G CO.,

"By JOHN F. MILLER, *President.*

"By S. R. IRWIN, *Sec't'y.*

"$20,000.00. On the 1st day of August, 1879, The Willamette Woolen Manufacturing Company promises, for value received, to pay without grace to The Bank of British Columbia twenty thousand dollars in gold coin of the United States, with interest in like gold coin at the rate of seven per cent. per annum from the 1st day of August, 1875, interest payable quarterly.

"Salem, Oregon, 23 Aug., 1875.

[Seal. W. W. M. Co.]

"(Signed) W. W. M'F'G. CO.,

"By JOHN F. MILLER, *President.*

"By S. R. IRWIN, *Sec't'y.*"

At the same time the defendant procured John F. Miller and William C. Griswold to make and execute their three notes, all bearing dates on that day, in the words and figures following, to wit:

49 "$8,333.33⅓. In six months from the 1st day of August, 1875, without grace, we do, for value received, jointly and severally, promise to pay to the order of The Bank of British Columbia eight thousand three hundred and thirty-three 33⅓-100 dollars in gold coin of the United States, with interest thereon from said 1st of August till payment in like gold coin at the rate of seven per cent. per annum, interest payable quarterly.

"Salem, Oregon, 23 Aug., '75.

"(Signed JOHN F. MILLER.

"WILLIAM C. GRISWOLD.

"$8,333.33⅓. Nine months from the 1st day of August, 1875, without grace, we do, for value received, jointly and severally, promise to pay to the order of The Bank of British Columbia eight thousand three hundred and thirty-three 33⅓-100 dollars of gold coin of the United States, with interest thereon from the 1st day of August, 1875, till paid in like gold coin at the rate of seven per cent. per annum, interest payable quarterly.

"Salem, Oregon, 23 Aug., '75.

"(Signed) JOHN F. MILLER.
"WILLIAM C. GRISWOLD.

50 "$8,333.33⅓. Twelve months from the 1st day of August, 1875, without grace, we do, for value received, jointly and severally, promise to pay to the order of The Bank of British Columbia the sum of eight thousand three hundred and thirty-three 33⅓-100 dollars in gold coin of the United States, with interest thereon from the 1st day of August, 1875, till paid in like gold coin at the rate of seven per cent. per annum, interest payable quarterly.

"Salem, Oregon, 23 Aug., '75.

"(Signed) JOHN F. MILLER.
"WILLIAM C. GRISWOLD."

That these three notes, amounting to twenty-five thousand dollars, together with the four previously described notes, amounting to sixty thousand dollars, making in all seven notes, amounting to eighty-five thousand dollars, were then and there delivered to said plaintiff.

Further complaining, your humble orator shews unto your honour that the said defendant, The Willamette Woolen Manufactur-
51 ing Company, to secure the payment of said principal sums and interest thereon as mentioned in said promissory notes, according to the tenor thereof, did, at the same time and places, execute under the hands of its president, John F. Miller, and of its secretary, Sam. R. Irwin, and its corporate seal, and deliver to the said plaintiff a certain mortgage, bearing date on the 24th day of Aug., 1875, and conditioned for the payment of the said sum of eighty-five thousand ($85,000) dollars, gold coin of the United States, and interest thereon at the rate, and at the time, and in the manner specified in said mortgage, and according to the condition thereof, which said mortgage was duly acknowledged and certified, so as to entitle it to be recorded, and the same was afterwards, to wit, on the thirty-first day of August, A. D. 1875, duly recorded in the office of the county records of the county of Marion, State of Oregon, liber 7 of Mortgages, pages 613–619, a copy of which said mortgage, with the endorsements thereon, is herewith set forth and made a part of this bill of complaint, to wit:

52 "This identure, made and entered into this 24th day of August, in the year of our Lord eighteen hundred and seventy-five, between the 'Willamette Woolen Manufacturing Company, a corporation created by and under a special act of the Legislative Assembly of the then Territory of Oregon, passed the 17th of December, 1856, entitled an act to incorporate the Williamette Wollen

Manufacturing Company, the party of the first part, and the Bank of British Columbia, a foreign corporation doing business in the State of Oregon, and fully empowered and authorized in all respects under and by the State aforesaid to do and transact business herein, with its principal place of business in the city of Portland, county of Multnomah, and State aforesaid, party of the second part, witnesseth:

"That whereas on this day, but prior to the making and ensealing thereof, the said The Williamette Woolen Manufacturing Company hath, at a meeting of its board of directors regularly and legally
53 called, directed the making of four several promissory notes by said corporation, the aggregate amount of which is sixty thousand dollars, and hath approved the making of three other promissory notes by John F. Miller and William C. Griswold, in amount aggregate twenty-five thousand dollars; and whereas, further, at said meeting of said directors the making, ensealing, and delivery of their indenture was especially and particularly authorized and the same directed to be done in manner and form as the same is herein done and for the purpose of securing the payment of the promissory notes aforesaid, all of which shall be hereinafter herein set forth, the said notes having been made, and this mortgage as well, to secure unto said Bank of British Columbia the true payment of eighty-five thousand dollars in gold coin loaned by it to said party of the first part.

"Wherefore in consideration of the premises the party of the first part for said consideration moving from said party of the sec-
54 ond part, and for the further consideration of eighty-five thousand dollars, in gold coin, in hand paid to said party of the first part by the said party of the second part, the receipt whereof is hereby duly acknowledged, doth hereby grant, bargain, sell, assign, transfer, set over, and convey unto the party of the second part, its assigns, successors, and representatives, all the following real property lying and being situate in the county of Marion and State of Oregon, more particularly described as follows, to wit, that parcel of realty upon which the mill property of the party of the first part now stands, described as follows:

"Beginning at a point in the west side of Broadway, between North Salem and Salem, said point being three hundred and thirty-four (334) feet southerly from the south side of Mill street in North Salem and one hundred and sixty-nine (169) feet southerly from the southeast corner of Hutton's lot, running thence N. 71° W. 4.94 ch's; thence N. 19° E. 58 links; thence N. 71° W. 64½ links; thence S.
55 49° 41′ W. about 6.94 ch's, to the point of intersection with the N. E. boundary line of the Wilson land claim; thence S. 7° 30′ E. 4.03 ch's, to the point of intersection with a line bearing N. 71° W., being 2.65 ch's in length, and the most southerly boundary line in the land, conveyed by J. B. McClure and wife to the party of the first part, recorded in book of deeds for Marion county, No. 10, page 616, reference to which is hereby made; thence S. 71° E. 2.65 ch's; thence N. 49° 40′ E. 8.52 ch's; thence N. 19° E. 2.38 ch's, to the place of beginning. Also all the machinery, tools, im-

plements, utensils, and things whatsoever in and about the factory building situate in said premises, or in any way appurtenant thereto or connected therewith, or necessary or convenient to the use of said manufacturing establishment, as the same was designated to be and now is used, the design hereof being to convey the entire parcel of realty, together with the tenements and buildings, together with all and singular the machinery of every kind used therein or thereabout; also the power to bring water from the Santiam
56 river to any place or places in or near Salem, the same to be brought as far as practicable through the channels or the valley of Mill Creek, and for such purposes may enter upon lands, and also said creek, and do all things proper and suitable for a safe and economical conveyance of water as aforesaid; also the exclusive right to the hydraulic power and privileges created by the water from the Santiam river; also all rights and powers of the said party of the first part in and to the water rights, powers, and privileges obtained under its charter or articles of incorporation, including all rights and property of kindred character acquired by said party of the first part in any way or from any person since the incorporation aforesaid; also that tract or parcel of realty upon which the party of the first part has now in operation a sash factory, lying and being situate in the county and State aforesaid, more particularly described as follows: Beginning at a point on the east line of Liberty street, in the city of Salem, State aforesaid, 264 feet northerly,
57 from the N. W. corner of block 26, in said city, and running thence at right angles with the said east line of Liberty street, in an easterly direction, 346½ feet to the west line of High street, if extended; thence southerly along the west side of High St., so extended, 264 feet to the N. E. corner of said block No. 26; thence easterly, at right angles with the last-mentioned line, 99 feet to the east line of High St., to the south bank of the mill-race, through which the water from Mill creek is conducted, to the sash factory; thence easterly along the south bank of said race to the margin of the water in said pond, on the south side, and by the meanderings thereof to a point where the west line of block 66, if extended in a northerly direction, would intersect Mill Creek; thence northerly along said line so extended to the north line of the land claim of W. H. Wilson; thence westerly along the said line last-mentioned to the east line of Liberty street extended; thence southerly
58 along said street, so extended, to the place of beginning, together with all and singular the tenements, hereditaments thereunto belonging or in anywise appertaining, and especially the buildings and all the machinery thereon used as part thereof, whether permanently attached thereto or otherwise; also all the rights and powers of the said party of the first part in and to the water rights, the water-course and race in said county, known as Mill creek or Santiam water-course, the same which feeds and supplies and furnishes the motive power of the factory of said party of the first part; also all the water of the said stream of water known as Mill Creek or the Santian water-power, which flows, or can flow, through the same from the point where said water leaves the San-

tian river to the point where the same flows into the Willamette river; also all the powers, privileges, and easements held by the party of the first part under the deeds of Joseph Watt and Sarah Watt, his wife; of John H. Moore and Margaret
59 Moore, his wife; of John D. Boon and Martha Boon, his wife; of James T. Linch and Mary M. Linch, his wife; of Gabriel Brown and Elizabeth Brown, his wife; of Henry Foster and Mary Foster, his wife; of Stephen Porter and Susan Porter, his wife; of A. B. Waller, Alvin Waller, and Elpha Waller, his wife; also all the rights and easements of every kind and description to or in the water of Mill Creek and the Santiam river, together with all rights of way now owned by the said party of the first part, as appurtenant to or neccessary to the use or enjoyments of the same rights and privileges and easements in the water aforesaid, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in anywise appertaining, unto the party of the second part, its successors, assigns, or legal representatives, to have and to hold forever.

Nevertheless, this conveyance is intended to operate as a mortgage to secure the true payment of the four following promis-
60 sory notes, made by said party of the first part, and the three following notes made by John F. Miller and William C. Griswold, the same having been made for eighty-five thousand dollars, hereinbefore referred to, copies of said seven notes now here being inserted. Then follow the copies of said seven notes, which said copies have already been set forth in this bill of complaint.

Now if the aforesaid promissory notes shall be all well and truly paid when due and payable according to their tenor and effect, these presents shall be void, but if default be made in the payment of either of said notes, as in the payment of interest upon either of them, when the same (either the notes or the interest) shall become due and payable, then, in the event of either such default, the party of the second part may enter into possession of said described premises, and sell the same in the manner prescribed by law, and out of the proceeds arising from said sale said party of the second part shall retain an amount sufficient to pay said promissory notes,
61 shall pay all the costs of sale, and shall then return the residue, if any, to the party of the first part, and the said party of the first part hereby covenants and agrees to and with the party of the second part to pay unto said party of the second part the said sum of money and interest described in the first four promissory notes hereinbefore set out.

And the party of the first part covenants and agrees that the party of the second part may, at the expense of said party of the first [part], take and keep upon the property herein conveyed a policy or policies of insurance equal in amount to the policies now held by the party of the second part, and that as the principal of the indebtedness represented by the four promissory notes is reduced that said party of the second part may always keep such policy or policies of insurance in amount sufficient to equal the current indebtedness of the party of the first part to the party of the second part as upon the

notes aforesaid, and in the event the property aforesaid should
62 be destroyed by fire, that whatever amount of money shall be received by the party of the second part upon any policy or policies of insurance so held by it as aforesaid shall be applied as credit upon the amount then due to said party of the second part by said party of the first part as by the four promissory notes aforesaid, and whatever money shall be at any time received by said party of the second part by reason of any policy of insurance against fire shall *by the* so much reduce the indebtedness of the party of the first party to the party of the second part, and any of said notes, whether due or not, if so paid as aforesaid, shall be at once cancelled and retired.

In witness whereof the party of the first part has caused its corporate seal to be affixed to these presents, and the same to be signed by its president and secretary by resolutions of the board of directors thereof, held at the city of Salem, in Oregon, the day and year first above written.

[Seal of W. M. M'f'g Co.]

WILLAMETTE WOOLEN MANUF'G CO.,
By JOHN F. MILLER, *President.*
SAM. R. IRWIN, *Sec'l'y.*

63 Signed, sealed, and delivered in presence of us witnesses—
JOHN J. SHAW.
WILLIAM C. GRISWOLD.
RUFUS MALLORY.

STATE OF OREGON, *County of Marion:*

Be it remembered that before me, the undersigned, a notary public in the State of Oregon, on the 23d day of August, A. D. 1875, personally appeared John F. Miller, president of the Willamette Woolen Manufacturing Company, and Samuel R. Irwin, secretary of the Willamette Woolen Manufacturing Company, whose names subscribed to the foregoing instrument as parties thereto, personally known to be the identical persons described in and who executed the said instrument, and they acknowledged to me severally that he, John F. Miller, as president of said company, and he, the said Samuel R. Irwin, as secretary thereof, executed the said instrument as and for the act and deed of the Willamette Woolen
64 Manufacturing Company freely and voluntarily and for the purpose therein mentioned; and the said John F. Miller, being by me duly sworn, did say that he is the president of the Willamette Woolen Manufacturing Company, and resides in the city of Salem, county of Marion, State of Oregon; that he is the legal custodian of and acquainted with the corporate seal of said company; that the seal affixed to the instrument is such seal; that the same was so affixed by him on the 23d day of August, A. D. 1875, as president of said company by order of the board of directors.

In witness thereof I hereunto affix my hand and notarial seal the day and year first in this certificate written.

[NOTARIAL SEAL.] JOHN J. SHAW,
Notary Public.

Further complaining, your humble orator shews unto your honour that all the seven previously-described promissory
65 notes, both principal and interest, have been paid, except the note for $20,000.00, given by said defendant unto said plaintiff, of Aug. 23, '75, and which said note became due on the 1st day of August, 1879.

That $8,757.42 of the said principal sum mentioned in said promissory note and in the said mortgage has been paid, but that there still remains due and unpaid the balance of $11,242.58 of said principal; that there further remains due and unpaid interest up to the 30th of April, 1881, amounting to $4,863.57, this, with the balance of principal still due and unpaid, making the sum of $15,606.57 due and unpaid on the 30th of April, 1881, from said defendant, the Willamette Woolen Manufacturing Company, to said plaintiff.

Further complaining your orator shews unto your honour that the plaintiff is now the lawful owner and holder of said promissory note and said mortgage; that no proceedings have been had at law or otherwise to recover the moneys due on said promissory note
66 or for any part thereof.

That plaintiff has no plain, adequate, or complete remedy at law.

That the amount in controversy is over $500.00.

The defendants, W. C. Griswoll, C. A. Reed, Thomas Smith, Seneca Smith, W. Lair Hill, H. Y. Thompson, and Geo. H. Durham, who are partners of the name of Hill, Durham & Thompson; W. S. Ladd and A. Bush, who are partners under the name of Ladd & Bush; Andrew Kelly, James W. Nesmith, Thomas A. Mauzey, Ed. Chamberlain, W. G. Woodworth, W. H. Holmes, W. H. Watkinds, Ben. Hayden, all claim to have some interest in or upon said property, as purchasers, mortgagors, redemptioners, holders of judgments, or otherwise, but that all of said claims are subsequent to your orator's mortgage and subject to the lien thereof.

That as your orator is informed said Griswold and C. A. Reed claim the premises as purchasers; said Thomas Smith, holder of judgment for $1,029.75 and $173.67 costs, said Seneca Smith of
67 judgment for $182.50 & $9.25 costs; said Hill, Durham, and Thompson of judgment for $9,365.42 & $37.25 costs; said Ladd & Bush of judgment for $324.32 & $43.85 costs, and $308.25 and $27.75 costs; said Andrew Kelly of judgment for $477.80 & $9.75 costs; said J. W. Nesmith of judgment for $500 and $9.73 costs; said E. Chamberlain of judgment for $151 & $17.25 costs; said Thomas A. Manzey of judgment for $490 & $9.75 costs; said W. G. Woodworth of judgment for $135.32 and $9.75 costs; said W. H. Holmes of judgment for $500 & $9.75 costs; said Ben. Hayden of judgment for $400 & $9.75 costs; said W. H. Watkinns of judgment for $479.00 & $55.15 costs; and a redemptioner from C. A. Reed, purchaser at a sale of the U. S. marshal upon a writ of *fi. fa.* against the property of defendant, W. C. Griswold.

That all of said lien-holders, as your orator is informed, claim their lien upon such premises by virtue of judgments recovered against said W. C. Griswold and docketed so as to operate as a lien against his—Griswold's—property.

That your orator has no full, exact, or specific information
68 as to said alleged liens other than that all of them are subordinate to your orator's mortgage lien; wherefore, in addition to the prayers to be hereinafter prayed, your orator now here prays that all of the aforenamed parties may be made defendants and required to answer this bill and to set out particularly their claims upon the said premises, and to show the nature, amount, and character of said claim.

That there are no prior or subsequent encumbrances or liens, either by judgments or otherwise, in favor of any other persons other than already hereinbefore set forth, upon the aforesaid property described in the mortgage, as your orator is informed and believes.

Wherefore the plaintiff prays that this honorable court will render a decree and judgment against the said defendant, The Willamette Woolen Manufacturing Company, for the sum of fifteen thousand six hundred and six $\frac{51}{100}$ dollars in United States gold coin, with interest at the rate of seven per cent. per annum from the 30th day of April, A. D. 1881, on $11,242.58 thereof, being the bal-
69 ance of principal of said promissory note still due and unpaid, until payment thereof.

That this honorable court will decree that said mortgage be foreclosed, and that the defendants herein, and all persons claiming under them, may be barred and foreclosed of all equity of redemption, or other interest in said mortgaged premises, save only the statutory right to redeem.

That the usual decree may be made for the sale of said premises, or so much as may be necessary to pay the same, with costs and disbursements, by the proper officer of this honorable court.

That the proceeds of said sale may be applied, first, to the costs of sale, costs and disbursements of the suit, and accruing costs; second, the payment of said principal sum and interest prayed for in the former averment, and the overplus, if any there be, after making such payment as aforesaid, be paid on demand to the party or parties entitled thereto.

That the said plaintiff may have judgment and execution
70 against said defendant, The Willamette Woolen Manufacturing Company, for any deficiency which may remain after applying all the proceeds of the sale of said premises properly applicable to the payment of said principal and the interest thereon as aforesaid.

That the officer conducting such sale make a deed to the purchaser, and that said purchaser be let into the possession of the premises on production of said officer's deed therefor.

That he may have such further and other and general relief in the premises as to this honorable court may seem meet and agreeable to equity.

Whereupon, the premises being further considered, and forasmuch as there is some doubt as to the true construction of section 411, chapter 5, title 4 of the general laws of Oregon in the particular as to whether thereunder the aforenamed John F. Miller and William C. Griswold should, in their individual right, be made parties de-

fendant hereto, inasmuch as their said promissory notes have been paid—

71 Your orator prays your honor that if, upon inspection of this bill, they shall seem necessary parties, then that proper process may issue, and that such other proceedings may be had, so as to bring them in before this honorable court as defendants to this your orator's bill.

EFFINGER AND BOURNE,
Attorneys for Plaintiff.

UNITED STATES OF AMERICA,
State of Oregon, County of Metnomah:

I, Frederick Townsend, being first duly sworn, do say: That the plaintiff corporation in the foreging bill of complaint, The Bank of British Columbia, is a foreign, non-resident corportion; that I am the manager and agent of said plaintiff corporation, and that the statements made in the foregoing bill of complaint are true, as I verily believe.

F'ED'K TOWNSEND.

Subscribed and sworn to before me this 5th day of May, A. D. 1881.

[NOTARIAL SEAL.] FRED. V. HOLMAN,
Notary Public in and for Oregon.

72 Endorsed: Copy of original bill of complaint, together with supplemental bill inserted. Take notice that the within is a true copy of the original bill of complaint and the supplemental bill inserted, and to this I certify. Jonathan Bourne, Jr., of att'ys for pl'ff.

DISTRICT OF OREGON, *ss:*

I certify that after diligent search and enquiry I am unable to find W. C. Griswold and Edward Chamberlain (defendants mentioned in the annexed copy of bill of complaint) within the district of Oregon; that I am credibly informed that said Chamberlain is now in the State of Texas, and as to said Griswold I am unable to learn his whereabouts.

Portland, Sept. 14, 1881.

E. S. KEARNEY,
U. S. Marshal, District of Oregon.

DISTRICT OF OREGON, *ss:*

73 I hereby certify that I have duly served a certified copy of the "original bill of complaint, together with supplemental bill inserted" (duly certified to by Jonathan Bourne, Jr., of attorneys for pl'ff), in suit of The Bank of British Columbia *vs.* The Willamette Woolen Manufacturing Company *et al.*, upon Ben. Hayden, one of the defendants in said bill mentioned, by delivering the

same to him personally on the 9th day of September, 1881, at Salem, in the county of Marion, in said district.

EDWARD S. KEARNEY,
U. S. Marshal,
By WILLIAM S. BARKER, *Deputy.*

DISTRICT OF OREGON, *ss:*

I hereby certify that I have duly served a certified copy of the "original bill of complaint, together with supplemental bill inserted" (duly certified to by Jonathan Bourne, Jr., of attorneys for pl'ff), in suit of The Bank of British Columbia *vs.* The Willamette Woolen Manufacturing Company *et al.*, upon Thomas Smith, one of the defendants in said bill mentioned, by delivering the same to him personally on the 8th day of September, 1881, at The Dalles, in the county of Wasco, in said district.

EDWARD S. KEARNEY,
U. S. Marshal,
By JOHN T. STORRS,
Special Deputy.

74 UNITED STATES OF AMERICA, } *ss:*
District of Oregon, }

To whom it may concern:

Know ye, that by virtue of the authority in me vested as marshal of the United States for the district of Oregon I have appointed John T. Storrs, of Wasco county, my special deputy, and I do hereby depute and authorize him to make due service and return of the foregoing and annexed "copy of original bill of complaint, together with supplemental bill inserted," in suit of The Bank of British Columbia *vs.* The Willamette Woolen Manufacturing Co. *et al.*, and the said service having being duly completed, this appointment to terminate.

Witness my hand, at Portland, in said district, this 6th day of September, A. D. 1881.

E. S. KEARNEY,
United States Marshal, District of Oregon.

UNITED STATES OF AMERICA, } *ss:*
District of Oregon, }

I, John T. Storrs, do solemnly swear that I will faithfully execute all lawful precepts directed to the marshal of the United States for district of Oregon, under the authority of the United States, and in all things well and truly, and without malice or partiality, perform the duties of the office of deputy United States marshal for the district of Oregon during my continuance in said office and take only lawful fees, so help me God.

JOHN T. STORRS.

Subscribed and sworn to before me, this 8th day of September, 1881.

[NOTARIAL SEAL.]

J. B. CONDON,
Notary Public for Oregon.

75 DISTRICT OF OREGON, *ss:*

I hereby certify that I have duly served a certified copy of the "original bill of complaint, together with supplemental bill inserted, (duly certified to by Jonathan Bourne, Jr., of att'y for pl'ff), in suit of The Bank of British Columbia *vs.* The Willamette Woolen M'f'g Co. *et al.* upon J. W. Nesmith, one of the defendants in said bill mentioned, by delivering same to him personally on the 7th day of September, 1881, at Derry, in the county of Polk, in said district.

E. S. KEARNEY,
United States Marshal, District of Oregon.

DISTRICT OF OREGON, *ss:*

I hereby certify that I have duly served a certified copy of the "original bill of complaint, together with supplemental bill inserted." (duly certified to by Jonathan Bourne, Jr., of att'y for pl'ff), in suit of The Bank of British Columbia *vs.* The Willamette Woolen M'f'g Co. *et al.*, upon W. H. Watkinds, W. H. Holmes, T. A.
76 Mauzey, W. G. Woodworth, Andrew Kelly, and C. A. Reid, defendants in said bill mentioned, by delivering same to each of them personally on the 7th day of September, 1881, at Salem, in the county of Marion, in said district.

E. S. KEARNEY,
U. S. Marshal, District of Oregon.

DISTRICT OF OREGON, *ss:*

I hereby certify that I have duly served a certified copy of the "original bill of complaint, together with supplemental bill inserted," (duly certified to by Jonathan Bourne, Jr., of att'y for pl'ff), in suit of The Bank of British Columbia *vs.* The Willamette Woolen Manufacturing Company *et al.*, upon Seneca Smith, one of the defendants in said bill mentioned, by delivering the same to him personally on the 7th day of Sept., 1881, at Portland, in the county of Multnomah, in said district.

Dated this 7th day of Sept., 1881.

EDWARD S. KEARNEY,
U. S. Marshal,
By W. S. WATERS, *Deputy.*

77 DISTRICT OF OREGON, *ss:*

I hereby certify that I have duly served a certified copy of the "original bill of complaint, together with supplemental bill inserted," duly certified to by Jonathan Bourne, Jr., of att'ys for pl'ff., in suit of the Bank of British Columbia *vs.* The Williamette Woolen M'f'g Co. *et al.* upon W. S. Ladd and H. Y. Thompson, defendants in said bill mentioned, by delivering the same to each of them personally on the 6th day of September, 1881, at Portland, in the county of Multnomah, in said district.

E. S. KEARNEY,
United States Marshal, District of Oregon.

Endorsed: Marshal's return of service of copy of "original bill of

complaint, with supplemental bill inserted." Returned and filed September 14, 1881. R. H. Lanison, clerk, by P. Leonard, deputy clerk.

78 And afterwards, to wit, on the 19th day of September, 1881, there was duly filed in said court an affidavit for publication of summons in words and figures as follows, to wit:

79 *Affidavit for Publication of Summons.*

In the Circuit Court of the United States for the District of Oregon.

BANK OF BRITISH COLUMBIA, Plaintiff,
vs.
THE WILLIAMETTE WOOLEN MANUFACTURING COMPANY *et al.*, Defendants.

UNITED STATES OF AMERICA, } *ss:*
District of Oregon.. }

Frederick Townsend, being duly sworn, says: That he is the duly appointed agent and manager of the Bank of British Columbia, the plaintiff in the above-entitled suit; that the supplemental bill of complaint in said suit was filed with the clerk of said court on the 5th day of September, A. D. 1881, and summons thereupon issued; that said suit is brought to foreclose a certain mortgage duly filed and recorded in Marion county records book of mortgages No. (7) seven, pages 613–619, on the 31st day of August, A. D. 1875, given by the Williamette Woolen Manufacturing Company to the Bank of British Columbia to secure the payment of a certain promissory note for $20,000.00 from said def't, The Williamette Woolen Manufacturing Company, to this plaintiff, The Bank of British Co-
80 lumbia, and dated at Salem, Oregon, on the 23d day of August, 1875, payable on the 1st day of August, 1879, with interest payable quarterly at the rate of seven per cent. per annum until paid. That there still remains due and unpaid $11,242.58 of said principle, together with interest amounting on the 30th day of April, 1881, to $4,363.93, making in all the sum of $15,606.51 still due and unpaid on the 30th day of April, 1881. The cause of suit is fully set forth in the verified bill of complaint with supplemental bill inserted on file herein.

That William C. Griswold claims the premises described in the above-herein referred to mortgage as a purchaser, and that Ed. Chamberlin claims to have some interest in and upon said property as a judgment creditor of Griswold's; hence both have been made partied-defendants in the above-entitled suit.

That said defendants, W. C. Griswold and Ed. Chamberlin, reside out of this State, and cannot, after due diligence, be found therein, and this affiant in support thereof states the following facts and circumstances:

That affiant, for the purpose of finding said defendants and ascertaining their place of residence, has made due and diligent inquiry

of and among the relations, former neighbors, friends, and
81 business acquaintances, and can gain no definite information in regard to their present residence or post-office address, other than that they do not now reside in the State.

That affiant has made diligent inquiry to find said defendants, but cannot, after due diligence, find them within this State.

That this affiant therefore says that personal service of said summons cannot be made on said defendants, Griswold and Ed. Chamberlin, and prays for an order that service of the same may be made by the publication thereof.

FREDERICK TOWNSEND.

Subscribed and sworn to before me, this 19 day of September, A. D. 1881.

[SEAL.] JONATHAN BOURNE, JR.,
Notary Public for and in Oregon.

Endorsed: Filed Sept. 19th, 1881. R. H. Lamson, clerk, by P. Leonard, deputy clerk.

82 And afterwards, to wit, on 19 day of September, 1881, there was duly filed in said court an "order for publication of summons," in words and figures as follows, to wit:

83 *Order of Publication of Summons.*

In the Circuit Court of the United States for the District of Oregon.

BANK OF BRITISH COLUMBIA, Plaintiff,
vs.
THE WILLAMETTE WOOLEN MANUFACTURING COMPANY, Defendants.

Now this day comes the plaintiff by Mr. Jonathan Bourne, Jr., of counsel, and moves the court for an order requiring the defendants, William C. Griswold and Ed. Chamberlain, to appear and plead, answer or demur to the bill of complaint, with supplemental bill inserted, herein; and it appearing to the court from the bill of complaint, with supplemental bill inserted, herein, and the affidavit of Frederick Townsend, agent and manager of the said plaintiff, the Bank of British Columbia, now herein filed, that this suit is brought to enforce a claim against certain lands, water rights, and easements, situate in this district, and that said defendants, W. C. Griswold and Ed. Chaimberlain, are not inhabitants of nor found within the district of Oregon, and have not voluntarily appeared in this suit, and that their place of residence is unknown. It is ordered that the service of the summons in this suit be made upon the defendants, W. C. Griswold and Ed. Chamberlain, by publication thereof in "The Daily Morning Standard," a newspaper published at the city of Portland, county of Multnomah, and State of Oregon, hereby designated as the newspaper most likely to give notice to said defendant; that such publication be made at least once a week for six weeks.

DEADY, *J.*

Endorsed: "Order for publication of summons." "Filed September 19, 1881. R. H. Lamson, clerk, by P. Leonard, deputy clerk."

83½ And afterwards, to wit, on the 21 day of October, 1881, there was duly filed in said court a stipulation, in words and figures as follows, to wit:

84 In the Circuit Court of the United States for the District of Oregon.

THE BANK OF BRITISH COLUMBIA, Plaintiff,
vs.
THE WILLAMETTE WOOLEN MANF. CO. *et al.*, Defendants.

This memorandum, made this 21st of October, A. D. 1881, by the plaintiff corporation appearing by Mr. Jonathan Burns, of solicitors for p'ff, and by the defendant corporation, the W. W. M. Co., appearing by Mr. Geo. H. Burnett, of solicitors for said def't corporation. Witnesseth that it is hereby stipulated and agreed that whereas the said def't corporation did on the — day of July, 1881, duly file its answer to the original bill of complaint and present therein the question now here by this stipulation to be tendered for adjudication, and whereas the plaintiff corporation did duly file exceptions thereto, but did on the next following rule day file a supplemental bill of complaint, a copy of which was duly had by the said def't corporation. And whereas there has been no answer or other pleading filed since by said defendant corporation.

Now, therefore, it is hereby specially stipulated and agreed that there may be presented to the court this day and decided this — the following question, the same being the only matter in
85 defence or avoidance to be tendered by said defendant corporation, viz., as to whether the right of the defendant, the Willamette Woolen Manufacturing Company, arising under section five of the act of December 17, 1856, of the Territorial Legislature of Oregon, as modified by the other sections of said act, was the personal and exclusive franchise of said corporation, and whether the same could be sold, aliened, or mortgaged by the said corporation to any other person.

Now then, in the present state of the pleadings, this matter and question may and shall be passed and decreed upon and determined between the parties hereto, the holding upon and determination thereof to have just the legal effect, and no more nor less, than if the pleadings were now in such formal condition as regularly and rightfully they should be in order to present for determination the said questions.

(S'g'd) JONATHAN BOURNE, JR.,
Of Solicitors for Pl'ff.

(S'g'd) GEO. H. BURNETT,
Of Defendants' Solicitors.

Endorsed: "Stipulation. Filed October 21, 1881. R. H. Lamson, clerk, by P. Leonard, deputy clerk."

86 And afterwards, to wit, on Friday, the 21 day of October, 1881, the same being the 17th judicial day of the regular October term of said court—present: The Honorable Matthew P. Deady, United States district judge presiding—the following proceedings were had in said case, to wit:

87 In the Circuit Court of the United States for the District of Oregon.

THE BANK OF BRITISH COLUMBIA
vs.
THE WILLAMET WOOLEN MANUFACTURING COMPANY. } No. 745.

OCTOBER 21, 1881.

Now, at this day, comes the complainant, Mr. Jonathan Bourne, Jr., and Mr. W. H. Effinger, of counsel, and the defendant by Mr. George H. Burnett, of counsel, and this cause comes on to be heard upon the pleadings, and is argued by counsel and submitted to the court, who will advise thereof.

88 And afterwards, to wit, on Saturday, the 22 day of October, 1881, the same being the 18th judicial day of the regular October term of said court—present, the Honorable Matthew P. Deady, United States district judge presiding—the following proceedings were had in said case, to wit:

89 In the Circuit Court of the United States for the District of Oregon.

BANK OF BRITISH COLUMBIA
vs.
THE WILLAMETTE WOOLEN MANUFACTURING COMPANY. } No. 745.

OCTOBER 22, 1881.

This cause comes on this day by consent and by stipulation, and the def't corporation, The Willamette Woolen Manufacturing Company, waiving all other defenses, pleas, and answers, &c., tenders for adjudication and determination the contention presented by its answer to the original bill of complaint, which is that The Willamette Woolen Manufacturing Company could not sell or mortgage the franchises upon it conferred by the Territorial Legislature of the Territory of Oregon, in the act entitled: "An act to incorporate the Willamette Woolen Manufacturing Company," passed and approved on the 17th day of December, A. D. 1856, the plaintiff appearing by Mr. Jonathan Bourne, jr., of solicitors, and the def't. by Mr. George H. Burnett, of solicitors. Upon argument by counsel and upon full consideration, the court doth adjudge and find that the defend-

90 ant corporation, The Willamette Woolen Manufacturing Company did have full authority and power to make and execute the mortgage now here sought to be foreclosed, and that it conferred upon the plaintiff corporation, by said mortgage, a lien upon all its right and power under said Territorial act, to take water from the Santiam river in upon its franchise touching the taking, carrying and using of said water and all the rights, privileges and uses inci-

dent thereto. And it appearing to the court that there is now due and payable from the defendant, The Willamette Woolen Manufacturing Company the sum of $15,606.51, with interest at the rate of seven per cent. per annum from the 30th day of April, A. D. 1881, on $11,242.58, until payment to the plaintiff. It is therefore adjudged, ordered, and decreed, that the defendant, The Willamette Woolen Manufacturing Company, do pay unto the plaintiff the said sum of money, together with its costs and disbursements, within thirty days next following the date hereof, and that in default of such payments, then it is ordered and decreed that the said
91 mortgaged premises or a competent part thereof be sold according to law by the master, and that the money to arrive by such sale be applied in payment of what shall appear to be due to the plaintiff for principal, interests, and costs, as aforesaid, and be, in the meantime, paid into the bank to the credit of this cause, and that the said defendants be barred and foreclosed forever of all claim or claims and equity of redemption to and in said premises, save as in so far as under the statute of Oregon it may have the same.

(Signed) LORENZO SAWYER,
Circuit Judge.

92 And afterwards, to wit, on the 5 day of December, 1881, the same being in vacation, the following proceedings were had in said case, to wit:

93 In the Circuit Court of the United States for the District of Oregon.

BANK OF BRITISH COLUMBIA
vs.
THE WILLAMETTE WOOLEN MANUFACTURING COMPANY *et al.* } No. 745.

DECEMBER 5, 1881.

Now at this day comes the complainant by Mr. W. H. Effinger, of counsel, and moves for a decree *pro confesso* against all of the defendants herein, except the defendant, the Willamette Woolen Manufacturing Company, and it appearing that said defendants, W. C. Griswold, C. A. Reed, Thomas Smith, Seneca Smith, W. Lair Hill, H. Y. Thompson, and Geo. H. Durham, who are parties under the name of Hill, Durham, & Thompson, W. S. Ladd, and A. Bush, who are partners under the name of Ladd and Bush, Andrew Kelly, James W. Neswith, Thomas A. Mauzey, Ed. Chamberlain, W. G. Woodworth, W. H. Holmes, W. H. Watkinds, and Ben. Hayden were duly served with process herein, and that they have failed to file any answers, demurrer, or other plea herein within the time prescribed by law and the rules of this court, it is therefore
94 ordered and adjudged that the bill herein be, and the same is hereby taken as confessed by said last-named defendants.

95 And afterwards, to wit, on Friday, the 3d day of February, 1882, the same being the 47th judicial day of the regular October term of said court—present, the Honorable Matthew P. Deady, United States district judge presiding—the following proceedings were had in said case, to wit:

96 In the Circuit Court of the United States for the District of Oregon.

THE BANK OF BRITISH COLUMBIA
vs.
THE WALLAMET WOOLEN MANUFACTURING COMPANY *et al.* } No. 745.

FEBRUARY 3, 1882.

Now at this day comes the complainant, by Mr. W. H. Effinger, of counsel, and moves the court for a decree against the defendants, W. C. Griswold, C. A. Reed, Thomas Smith, Seneca Smith, W. Lair Hill, H. Y. Thompson, and George H. Durham, who are partners under the firm name of Hill, Durham & Thompson; W. S. Ladd and Ashael Bush, who are partners under the firm name of Ladd and Bush; Andrew Kelly, James W. Nesmith, Thomas A. Mauzey, Edward Chamberlain, W. G. Woodworth, W. H. Holmes, W. H. Watkinds, and Benjamin Hayden; and it appearing to the court that a decree *pro confesso* was entered herein against said last above-named defendants on the fifth day of December, one thousand eight hundred and eighty-one, more than thirty days prior to this date,

97 and that they nor either of them have not filed any plea, demurrer or answer to the bill of complaint herein, it is ordered that said bill be and the same is hereby taken as confessed by said last above-named defendants, and a decree foreclosing the lien of complainants' said mortgage and directing said mortgaged property to be sold to satisfy the same, having heretofore been pronounced against the defendant, the Wallamet Woolen Manufacturing Company, the same here now being referred to and as to said defendant made a part hereof, it is ordered that Mr. William B. Gilbert, master in chancery, do proceed to sell the real estate and water rights set out and described in the bill, at public sale, at the court-house door, in the city of Salem, Marion county, Oregon, where said real estate is situate, to the highest and best bidder, for cash, in manner and form as on a sale made under an execution at law, and that the proceeds arising from such sale be brought into court for distribution according to the rights of the parties herein.

(Signed) DEADY, *J.*

98 And afterwards, to wit, on the 10 day of April, 1882, there was duly filed in said court a master's report of sale and distribution, in words and figures as follows, to wit:

99 *Report of Sale and Distribution.*

In the Circuit Court of the United States for the District of Oregon.

THE BANK OF BRITISH COLUMBIA, Complainant,

vs.

THE WILLAMETTE WOOLEN MANUFACTERING COMPANY, W. C. GRISWOLD, C. A. Reed, Thomas Smith, Seneca Smith, W. Lair Hill, H. Y. Thompson, Geo. H. Durham, W. S. Ladd, Ashsel Bush, Andrew Kelly, Jas. W. Nesmith, Thomas A. Mauzy, Edward Chamberlain, W. G. Woosworth, W. H. Holmes, W. B. Watkinds, and Benjamin Hayden, Defendant.

To the honorable judges of the circuit court of the United States for the district of Oregon:

In pursuance of the decrees made and entered in the above-entitled cause upon the twenty-second day of October, 1881, and the third day of February, 1882, I, W. B. Gilbert, the master in chancery of said court, do now respectfully report that, in accordance with said decrees, I advertised the premises mentioned in said decrees for sale at public auction, in manner and form as upon a sale upon execution, and previously to said sale advertised the time and place of holding said sale once in each week for four successive weeks, by causing a notice containing the title of said cause, the names of the parties thereto, and the name of the court wherein said cause was pending, and describing said premises, and stating that I would sell the same in pursuance of said decree, on Friday, the thirty-first day of March, A. D. 1882, at the hour of eleven o'clock in the forenoon of that day, at the door of the court-house of Marion county, at Salem, in said county of Marion, State of Oregon, at public auction, subject to redemption, to the highest bidder for cash, to be published for four successive weeks, to wit, four times in the Oregon Weekly Statesman, a newspaper printed and published every Friday in the city of Salem aforesaid, and in general circulation throughout said county and State; the date of the first paper containing said notice was the third day of March, 1882, and the date of the last paper containing said notice was the 24th day of March, 1882, and also by posting four weeks prior to said day of sale printed copies of said notice in three of the most conspicuous places in said county, a printed copy of which notice, so published and posted, is hereto attached, marked Exhibit "A."

100 EXHIBIT "A."

Master's Sale.

In the Circuit Court of the United States for the District of Oregon.

THE BANK OF BRITISH COLUMBIA, Complainant,

vs.

THE WILLAMETTE WOOLEN MANUFACTURING COMPANY, W. C. GRISWOLD, C. A. Reed, Thos. Smith, Seneca Smith, W. Lair Hill, H. Y. Thompson, Geo. H. Durham, W. S. Ladd, Asahel Bush, Andrew Kelly, James W. Nesmith, Thomas A. Mauzy, Edward Chamberlain, W. G. Woodworth, W. H. Holmes, W. H. Watkinds, and Benjamin Hayden, Defendants.

Notice is hereby given that in pursuance of decrees of said court in the above-entitled cause made and entered on the twenty-second day of October, 1881, and the third day of February, 1882, I, Wm. B. Gilbert, the master in chancery of said court, will proceed to sell at public auction to the highest bidder, for cash in hand, subject to redemption, at the front door of the court-house of Marion county, at Salem, in the county of Marion and State of Oregon, on Friday, the 31st day of March, 1882, at the hour of eleven o'clock in the forenoon, all the right, title, and interest which the said defendants or either of them had upon the 24th day of August, 1875, or have since acquired, in and to the following-described real property in the county of Marion and State of Oregon, to wit: That parcel of land upon which the mill property of said Willamette Woolen Manufacturing Company stands, bounded as follows: Beginning at a point in the west side of Broadway, between North Salem and Salem, said point being three hundred and thirty-four feet southerly from the south side of Mill street, in North Salem, and one hundred and sixty-nine feet southerly from the southeast corner of Hutton's lot; running thence north seventy-one degrees west four chains and ninety-four links; thence north nineteen degrees east fifty-eight links; thence north seventy-one degrees west sixty-four and one-half links; thence south forty-nine degrees and forty-one minutes west about six chains and ninety-four links to the point of intersection with the northeast boundary line of the Willson land claim; thence south seven degrees and thirty minutes east four chains and three links to the point of intersection with a line bearing north seventy-one degrees west, being two chains and sixty-five links in length and the most southerly boundary line in the land conveyed by J. B. McClane and wife to said company, recorded in book No. ten of records of deeds of said Marion county, page six hundred and sixteen; thence south seventy-one degrees east two chains and sixty-five links; thence north forty-nine degrees and forty minutes east eight chains and fifty-two links; thence north nineteen degrees east two chains and thirty-eight links to the place of beginning; also, all the machinery, tools, implements, utensils, and things whatsoever used in or about the factory building situate in said premises or in any way appurtenant thereto, and all buildings thereon or

connected therewith; also, the power to bring water from the Santiam river to any place or places in or near Salem through the valley or channel of Mill creek, and for such purposes to enter upon lands and upon said creek and do all things proper and suitable for a safe and economical conveyance of water as aforesaid; also, the exclusive right to the hydraulic powers and privileges created by the water from the Santiam river; also, all the rights and powers of said Willamette Woolen Manufacturing Company in and to the water rights, powers, and privileges obtained under its charter or articles of incorporation, including all rights and property of kindred character acquired by said company in any way or from any person since the incorporation aforesaid; also, that tract of realty upon which said company had upon said 24th day of August, 1875, a sash factory, and bounded and described as follows: Beginning at a point on the east line of Liberty street, in said city of Salem, two hundred and sixty-four feet northerly from the northwest corner of block twenty-six in said city; running thence at right angles with said east line of Liberty street in an easterly direction three hundred and forty-six and one-half feet to the west line of High street, if extended; thence southerly along the west side of High street so extended two hundred and sixty-four feet to the northeast corner of said block; thence easterly at right angles with the last-named line ninety-nine feet to the east line of High street; thence northerly along the east line of High street to the south bank of the mill-race, through which the water from Mill creek is conducted to the sash factory; thence easterly along the south bank of said race to the margin of the water in the pond at the head of said race; thence up the margin of the water in said pond on the south side and by the meanderings thereof to a point where the west line of block sixty-six, if extended, in a northerly direction, would intersect Mill creek; thence northerly along said line so extended to the north line of the land claim of W. H. Willson; thence westerly along the said line last mentioned to the east line of Liberty street extended; thence southerly along said street so extended to the place of beginning, together with the appurtenances and buildings thereon situate, and all machinery therein or attached thereto or used in connection therewith; also, all the rights and powers of said company in and to the water rights and water course and race in said county known as the Mill creek or Santiam water course, the same which feeds and supplies and furnishes the motive power for the factory of said company; also, all the water of the said stream of water known as Mill creek or the Santiam water power, which flows or can flow through the same, from the point where said water leaves the Santiam river to the point where the same flows into the Willamette river; also, all the powers, privileges, and easements held by the party of the first part under the deeds of Joseph Watt and Sarah Watt, his wife; of John H. Moore and Margaret Moore, his wife; of John D. Boon and Martha I. Boon, his wife; of James T. Linch and Mary M. Linch, his wife; of Gabriel Brown and Elizabeth Brown, his wife; of Henry Foster and Mary Foster, his wife; of Stephen Porter and Susan Porter, his wife; of A. B. Waller, Alvin F. Waller, and Elepha

Waller, his wife; also, all the rights and easements of every kind and description to or in the waters of Mill creek and the Santiam river, together with all rights of way owned by said company as appurtenant to or necessary to the use or enjoyment of said rights, privileges, and easements in the water aforesaid.

March 1, 1882.

WILLIAM B. GILBERT,
Master in Chancery of the Circuit Court of the United States for the District of Oregon.

That on the said thirty-first day of March, 1882, the day fixed for said sale according to said notice, and at the hour named therein, I attended at the place of sale mentioned in said notice, and then and there offered for sale said premises separately, in the order hereinafter described, to the highest bidder, for cash, at public auction, subject to redemption, and there being no bid offered for any
101 of said parcels separately, I thereupon offered the whole of said property as one entire parcel, and thereupon William Reid offered and bid therefor the sum of sixteen thousand dollars, and that being the highest bid therefor I accordingly struck off and sold the same, subject to redemption, to said William Reid for said sum of sixteen thousand dollars. The said property so advertised and sold is described as follows, to wit: All the right, title, and interest which the said defendants or either of them had upon the twenty-fourth day of August, A. D. 1875, or have since acquired, in or to the following-described real property, rights, and franchises in the county of Marion and State of Oregon, described as follows: That parcel of land on which the mill property of said Willamette Woolen Manufacturing Company stands, bounded as follows. Beginning at a point in the west side of Broadway, between North Salem and Salem, said point being three hundred and thirty-four feet southerly from the south side of Mill street, in North Salem, and 169 feet southerly from the southeast
102 corner of Hutton's lot; running thence north seventy-one degrees west four chains and ninety-four links; thence north nineteen degrees east fifty-eight links; thence north seventy-one degrees west sixty-four and one-half links; thence south forty-nine degrees and forty-one minutes west about six chains and ninety-four links to the point of intersection with the northeast boundary line of the Wilson land claim; thence south seven degrees and thirty minutes east four chains and three links to the point of intersection with a line bearing north seventy-one degrees west, being two chains and sixty-five links in length, and the most southerly boundary in the land conveyed by J. B. McClane and wife to said company, recorded in book No. ten of records of deeds of said Marion county, page six hundred and sixteen; thence south seventy-one degrees east two chains and sixty-five links; thence north forty-nine degrees and forty minutes east eight chains and fifty-two links; thence
103 north nineteen degrees east two chains and thirty-eight links to the place of beginning; also all the machinery, tools, implements, utensils, and things whatsoever used in or about the factory

building situate in said premises, or in any way appurtenant thereto, and all buildings thereon or connected therewith; also the power to bring water from the Santian river to any place or places in or near Salem, through the valley or channel of Mill creek, and for such purposes to enter upon lands and upon said creek, and do all things proper and suitable for a safe and economical conveyance of water as aforesaid; also the exclusive right to the hydraulic powers and privileges created by the water from the Santiam river; also all the rights and powers of said Willamette Woolen Manufacturing Company in and to the water rights, powers, and privileges obtained under its charter or articles of incorporation, including all rights and property of kindred character acquired by said company in any way or from any person since the incorporation aforesaid; also that tract of realty
104 upon which said company had upon said 24th day of August, 1875, a sash factory, and bounded and described as follows: Beginning at a point on the east line of Liberty street, in said city of Salem, two hundred and sixty-four feet northerly from the northwest corner of block twenty-six, in said city, running thence at right angles with said east line of Liberty street in an easterly direction three hundred and forty-six and one-half feet to the west line of High street, if extended; thence southerly along the west side of High street, so extended, two hundred and sixty-four feet to the northeast corner of said block; thence easterly at right angles with the last-named line ninety-nine feet to the east line of High street; thence northerly along the east line of High street to the south bank of the mill-race, through which the water from Mill creek is conducted to the sash factory; thence easterly along the south bank of said race to the margin of the water in the pond at the head
105 of said race; thence up the margin of the water in said pond on the south side and by the meanderings thereof to a point where the west line of block sixty-six, if extended in a northerly direction, would intersect Mill creek; thence northerly along said line so extended to the north line of the land claim of W. H. Wilson; thence westerly along the said line last mentioned to the east line of Liberty street extended; thence southerly along said street so extended to the place of beginning, together with the appurtenances and buildings thereon situate, and all machinery therein, or attached thereto, or used in connection therewith; also, all the rights and powers of said company in and to the water-rights and water-course and race in said county, known as the Mill creek or Santiam water courses, the same which feeds and supplies and furnishes the motive power for the factory of said company; also, all the waters of the said stream of water known as the Mill creek or the Santiam water power, which flows or can flow through the same
106 from the point where said water leaves the Santiam river to the point where the same flows into the Willamette river; also, all the powers, privileges, and easements held by the party of the first part under the deeds of Joseph Watt and Sarah Watt, his wife; of John H. Moore and Margaret Moore, his wife; of John D. Boon and Martha I. Boon, his wife; of James T. Linch and Mary M. Linch, his wife; of Gabriel Brown and Elizabeth Brown, his wife;

of Henry Foster and Mary Foster, his wife; of Stephen Porter and Susan Porter, his wife; of A. B. Waller, Alvin F. Waller, and Elepha Waller, his wife; also, all the rights and easements of every kind and description to or in the waters of Mill Creek and the Santiam river, together with all rights of way owned by said company as appurtenant to or necessary to the use or enjoyment of said rights, privileges, and easements in the water aforesaid.

And I further report that I have distributed the proceeds of said sale as follows, to wit: I have paid for publication of said notice
107 in said newspaper the sum of thirty dollars, for which I file voucher marked Exhibit "B." I have retained the sum of two hundred dollars, my fees and commissions herein, and it being proven to me by the written assignment of said complainant to said William Reid of the decrees above mentioned and all rights thereunder that the said William Reid is substituted to the rights of the complainant herein, and is entitled to receive the remainder of the proceeds of said sales, I have therefore paid to said William Reid the remainder of said proceeds, to wit, the sum of fifteen thousand seven hundred and seventy dollars, said sum being not sufficient to satisfy the amount adjudged in said decree to be due the complainant, and I file as vouchers therefor the receipt of said William Reid, marked Exhibit "C," and said assignment of decrees marked Exhibit "D."

Resume.

Proceeds of sale		$16,000 00
Cost of advertising notice	30 00	
Commissions of master	200 00	
Amount paid on decreee	5,770 000	
	$16,000 00	
		$16,000 00

108 Portland, Oregon, April 10th, 1882.
Respectfully submitted.

WM. B. GILBERT,
Master in Chancery of the Circuit Court of the United States for the District of Oregon.

EXHIBIT "B."

SALEM, OREGON, *April* 8, 1882.

Received of W. B. Gilbert, master in chancery of the circuit court of the United States for the district of Oregon, the sum of thirty dollars in full of advertising a notice of sale of property in the case of The Bank of British Columbia, complainant, *vs.* The Willamette Woolen Manufacturing Co. *et al.*, def'ts.

W. H. ODELL, per B.

EXHIBIT "C."

PORTLAND, OR., *April 1st*, 1882.

Received from W. B. Gilbert, Esq., as proceeds of master's sale

made by him, the sum of fifteen thousand seven hundred & seventy dollars towards payment of judgment obtained against the Willamette Woolen Manufacturing Company in the suit of the
109 Bank of British Columbia *vs.* said company.

(S'g'd) WILLIAM REID.

$15,770.00.

EXHIBIT "D."

In the Circuit Court of the United States for the District of Oregon.

THE BANK OF BRITISH COLUMBIA, Pl'ff,
vs.
THE WILLAMETTE WOOLEN MANUFACTURING COMPANY, Def'ts.

This is to certify that William Reid, Esq., of the city of Portland, State of Oregon, purchased and had assigned to him for the sum of six thousand dollars the mortgage given by the Willamette Woolen Manufacturing Company at Salem, Oregon, to the Bank of British Columbia, Portland, Oregon, and is now the holder and owner of said mortgage, and has been since the — day of August, A. D. 1881.

EFFINGER AND BOURNE,
Att'ys for Bank of British Columbia.

110 Endorsed: "Master's report of sale and distribution. Filed April 10, 1882. R. H. Lamson, clerk."

111 And afterwards, to wit, on Wednesday, the 21 day of June, 1882, the same being the 35th judicial day of the regular April term of said court—present: the Honorable Matthew P. Deady, United States district judge, presiding, the following proceedings were had in said case, to wit:

112 In the Circuit Court of the United States for the District of Oregon. June 21, 1882.

THE BANK OF BRITISH COLUMBIA, Plaintiff,
vs.
THE WILLAMETTE WOOLEN MANUFACTURING COMPANY, W. C. Griswold, C. A. Reed, Thomas Smith, Seneca Smith, W. Lair Hill, George H. Durham, W. S. Ladd, Ashael Bush, Andrew Kelly, James W. Nesmith, Thomas A. Mauzey, Edward Chamberlain, W. G. Woodworth, W. H. Holmes, W. H. Watkinds, Benjamin Hayden, and H. Y. Thompson, Defendants. } No. 745.

Now, at this day, this cause comes on to be heard on the report of the master of the sale of real property by him made, pursuant to the decree entered in this cause on the twenty-second day of October, eighteen hundred and eighty-one; and the complainant, appearing by Mr. Jonathan Bourne, Jr., of counsel, and the defendants not appearing, and it appearing to the court that said report was filed in

this court on the tenth day of April, eighteen hundred and
113 eighty-two, more than thirty days prior to the first Monday of the present month, and that no objections or exceptions have been filed thereto; and it further appearing to the court that the proceedings of said master, and the sale by him made of the real property in the bill mentioned, are in accordance with the decree in this cause, entered on the twenty-second day of October, eighteen hundred and eighty-one: It is ordered, adjudged, and decreed that the proceedings and sale of said master be in all things confirmed and ratified, and that the said master make, execute, and deliver to the purchaser at such sale, or to his assignee, a conveyance of the real property aforesaid, conveying all the right, title, and interest which the defendant, "The Willamette Woolen Manufacturing Company," had in or to the premises so sold, on the twenty-fourth day of August, eighteen hundred and seventy-five, the date of the execution by it of the mortgage set forth in the bill herein, and all the right, title, and interest that the remainder of said
defendants, or any of them, may have acquired in or to said
114 real property since said date last mentioned; and it is further ordered, that the defendants, or any of them who may be in the possession of said premises, or of any part thereof, or any person who may have come into possession under them, or any of them, pending this suit, deliver up the possession thereof to said purchaser, or to his assignee, on demand.

(Signed.) DEADY, JR.,

115 And afterwards, to wit, on the 28 day of February, 1883, there was duly filed in said court a petition for an appeal in words and figures as follows, to wit:

116 In the Circuit Court of the United States for the District of Oregon.

THE BANK OF BRITISH COLUMBIA, Complainant,

vs.

THE WILLAMETTE WOOLEN MANUFACTURING COMPANY, W. C. Griswold, C. A. Reed, Thomas Smith, Seneca Smith; W. Lair Hill, H. Y. Thompson, and Geo. H. Durham, partners under the name of Hill, Durham, and Thompson; W. S. Ladd and A. Bush, partners under the name of Ladd and Bush; Andrew Kelly, James W. Nesmith, Thomas A. Mauzey, E. C. Chamberlain, W. G. Woodworth, W. H. Holmes, W. H. Watkinds, and Ben Hayden, Defendants.

Now comes the defendant, The Willamette Woolen Manufacturing Company, above named, and prays this honorable court for the allowance of an appeal in the above-entitled case to the Supreme Court of the United States.

GEORGE H. WILLIAMS,
Att'y for Def't, Willamette Woolen Manufacturing Company.

Endorsed: "Filed February 28, 1883. R. H. Lamson, clerk, by G. G. Gammans, deputy clerk."

117 And afterwards, to wit, on Wednesday, the 28 day of February, 1883, the same being the 79th judicial day of the regular October term of said court—present the Honorable Matthew P. Deady, United States district judge, presiding—the following proceedings were had in said case, to wit:

118 In the Circuit Court of the United States for the District of Oregon. February 28, 1883.

BANK OF BRITISH COLUMBIA
vs.
THE WILLAMETTE WOOLEN MANUFACTURING COMPANY *et al.* } No. 745.

Now at this day comes the above-named defendant, the Willamet Woolen Manufacturing Company, by Mr. George H. Williams, of counsel, and prays the court for the allowance of an appeal of said cause to the Supreme Court of the United States; whereupon it is ordered that said prayer be, and the same hereby is, allowed.

(Signed) DEADY, J.

119 And afterwards, to wit, on the 1 day of March, 1883, there was duly filed in said court a bond for appeal in words and figures as follows, to wit:

120 *Bond for Appeal.*

In the Circuit Court of the United States for the District of Oregon.

THE BANK OF BRITISH COLUMBIA, Complainant,
vs.
THE WILLAMETTE WOOLEN MANUFACTURING COMPAAY, W. C. Griswold, C. A. Reed, Thomas Smith, Seneca Smith; W. Lair Hill, H. Y. Thompson, and Geo. H. Durham, partners under the name of Hill, Durham & Thompson; W. S. Ladd, and A. Bush, partners, under the name of Ladd & Bush; Andrew Kelly, James W. Nesmith, Thomas W. Mauzey, Ed. Chamberlain, W. G. Woodworth, W. H. Holmes, W. H. Watkinds, and Ben Hayden, Defendants.

Know all men by these present that we, Charles P. Church and H. B. Oatman, of Portland, Oregon, are held and firmly bound unto The Bank of British Columbia, the above-named complainant, in the sum of one thousand dollars, to be paid to the said Bank of British Columbia, its successors or assigns, to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and
121 administrators, firmly by these presents.

Sealed with our seals and dated this 28th day of Febuary, A. D. 1883.

Whereas the above-named Willamette Woolen Manufacturing Company has taken an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled suit by the circuit court of the United States for the district of Oregon, on

the 22d of October, A. D. 1881. Now, therefore, the condition of this obligation is such that if the above-named Williamette Woolen Manufacturing Company shall prosecute its said appeal with effect, and answer all costs and damages if it shall fail to make good its plea, then this obligation shall be void; otherwise to remain in full force and effect.

(S'g'd) CHAS. P. CHURCH. [SEAL]
H. B. OATMAN. [SEAL]

Sealed and executed in presence of—
H. Y. THOMPSON.
J. R. BALDWIN.

DISTRICT OF OREGON, } ss:
Multnomah County, }

122 We, Chas. P. Church and H. B. Oatman, of the city of Portland, Oregon, who have executed the foregoing bond, say, and each for himself says: That I am a resident of the city of Portland, in the State and district of Oregon, and a freeholder of said county and State; and am worth the sum of one thousand dollars over and above my just debts and liabilities and exclusive of property exempt from execution.

(S'g'd) CHAS. P. CHURCH.
H. B. OATMAN.

Suscribed and sworn to before me this 1st day of March, A. D. 1883.

[NOTARY SEAL.] H. Y. THOMPSON,
Notary Public for the State of Oregon.

Endorsed: "Bond on appeal. Approved March 1, 1883. Matthew P. Deady, district judge. Filed March 1, 1883. R. H. Lamson, clerk, by G. G. Gammans, deputy clerk."

123 And afterwards, to wit, on the 2 day of March, 1883, there was duly filed in said court a citation, in words and figures as follows, to wit:

124 *Citation.*

In the Supreme Court of the United States.

In the Circuit Court of the United States for the District of Oregon.

THE BANK OF BRITISH COLUMBIA, Complainant,

vs.

THE WILLAMETTE WOOLEN MANUFACTURING COMPANY, W. C. GRISWOLD, C. A. Reed, Thomas Smith, Seneca Smith, W. Lair Hill, H. Y. Thompson, and George H. Durham, partners under the the name of Hill, Durham & Thompson; W. S. Ladd and A. Bush, partners under the name of Ladd & Bush; Andrew Kelly, James W. Nesmith, Thomas A. Mauzey, Ed. Chamberlin, W. G. Woodworth, W. H. Holmes, W. H. Watkinds, and Ben. Hayden, defendants.

By the honorable Matthew P. Deady, one of the judges of the circuit court of the United States for the district of Oregon.

The United States of America, greeting, to the Bank of British Columbia, and to William H. Effinger, Esq., counsel and statutory attorney for said bank:

125 Whereas the Willamette Woolen Manufacturing Company has lately appealed to the Supreme Court of the United States from the decree rendered by the above-entitled circuit court in the above-entitled case on the 22d day of October, 1881, in favor of the said Bank of British Columbia, the other of the above-named defendants severing and declining to appeal, and has filed the security required by law, you are, therefore, hereby cited to appear before the said Supreme Court, at the city of Washington, on the second Monday of October next, to do and receieve what may appertain to justice to be done in the premises.

Given under my hand, at the city of Portland, in the district of Oregon, this first day of March, A. D. 1883.

MATTHEW P. DEADY,
District Judge.

126 DISTRICT OF OREGON, *ss:*

I, Wm. H. Effinger, of counsel for the above-named Bank of British Columbia, a foreign corporation, & its attorney in the State of Oregon, appointed unde- sec. 8 of chapter 24 of the miscellaneous laws of Oregon, do hereby accept & admit due service of the above citation by the delivery to me of a copy thereof at Portland, in said State, on this the first day of March, 1883.

W. H. EFFINGER,
Attorney for the Bank of British Columbia.

127 [Endorsed:] In the Supreme Court of the United States. No. 745. The Bank of British Columbia, compl't & respondent, *vs.* The Willamette Woolen Manufacturing Co., def't & appellant, *et al.* Citation. Filed March 2, 1883. R. H. Lamson, clerk, by G. G. Gammans, deputy clerk.

128 THE UNITED STATES OF AMERICA, } ss:
District of Oregon, }

I, R. H. Lamson, clerk of the United States circuit court for the district of Oregon, do hereby certify that the foregoing copy of transcript of record of the proceedings and papers in the case of The Bank of British Columbia *vs.* The Willamette Woolen Manufacturing Company has been by me compared with the original, and that it is a correct transcript therefrom and of the whole of such original as the same appears of record and on file at my office and in my custody.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Portland, in said district, this 8 day of August, 1883.

[Seal United States Circuit Court, Oregon.]

R. H. LAMSON, *Clerk,*
By G. G. GAMMANS, *Deputy Clerk.*

Endorsed on cover: Oregon C. C. U. S. No. 269. The Willamette Woolen Manufacturing Company, appellant, *vs.* The Bank of British Columbia. Filed 31st August, 1883.

119-191

FILED.
FEB 11 1886
JAMES H. McKENNEY.
CLERK.

SUPREME COURT

OF THE

UNITED STATES.

OCTOBER TERM, 1885.

No. 269.

THE WILLAMETTE WOOLEN MANUFACTURING COMPANY,
Appellant.

vs.

THE BANK OF BRITISH COLUMBIA,
Appellee.

Appeal from the Circuit Court of the United States,

FOR THE DISTRICT OF OREGON.

BRIEF OF GEO. H. WILLIAMS,

Of WILLIAMS, DURHAM & THOMPSON,

Attorneys for Appellant.

PORTLAND, OREGON.
F. W. BALTES & CO., PRINTERS, 110 FRONT STREET.
1886.

SUPREME COURT

OF THE

UNITED STATES.

OCTOBER TERM, 1865

No. 269.

THE WILLAMETTE WOOLEN MANUFACTURING COMPANY,

Appellant.

vs.

THE BANK OF BRITISH COLUMBIA,

Appellee.

BRIEF OF GEO. H. WILLIAMS,

Of WILLIAMS, DURHAM & THOMPSON,

Attorneys for Appellant.

STATEMENT.

On the 17th day of December, 1856, the Legislature of Oregon passed an act, of which the following is a copy, to-wit:

AN ACT to incorporate the Willamette Woolen Manufacturing Company.

SECTION 1. Be it enacted by the Legislative Assembly of the Territory of Oregon that George H. Williams, Alfred Stanton, Joseph Watt, Joseph Holman, Daniel Waldo, William H. Rector, E. M. Barnum, J. G. Wilson and J. D. Boon, and their associates, stockholders in the joint stock company known as the "Wil-

lamette Woolen Manufacturing Company," and their successors, are hereby declared a body corporate and politic by the name and style of the "Willamette Woolen Manufacturing Company," for the purpose of creating and improving water powers and privileges and manufacturing, and the present organization of said joint stock company shall continue until changed by said corporation.

SEC. 2. Said corporation shall have power to purchase, receive and possess lands, goods, chattels and effects of every kind, the same to use and dispose of at pleasure; to contract and be contracted with; to sue and be sued; to have a common seal, and the same to use and change at pleasure, and to ordain and establish such by-laws and regulations as it may deem expedient for its own government and the efficient management of its affairs, consistent with the constitution and laws of the United States and the laws of this Territory.

SEC. 3. The capital stock of said corporation shall not exceed two hundred thousand dollars, and shall be divided into shares of not less than one hundred dollars each, transferable as its by-laws may provide.

SEC. 4. Said corporation shall receive, possess and enjoy all the property, interests and rights of said joint stock company, and shall hold and have, and may enforce by legal remedies, all claims and obligations due or to become due, given or that may be given to said company; and all stock due or to become due to said company shall be payable to and collected by said corporation; and the individual members of said corporation shall each and singular be liable for the corporate debts of said company, contracted while a member of the same to the amount of his share of the corporate property.

SEC. 5. Said corporation shall have power to bring water from the Santiam river to any place or places in or near Salem, to be brought as far as practicable through the channel or the valley of Mill creek; and for such purpose may enter upon lands and also said creek, and do all things proper and suitable for a safe, direct and economical conveyance of water as aforesaid; but said corporation shall do no unnecessary injury to private property, and shall be answerable in damages to any person whose property is injured by its acts.

SEC. 6. Said corporation shall have the exclusive right to the hydraulic powers and privileges created by the water which it takes from the Santiam river, and may use, rent or sell the same or any portion thereof as it may deem expedient.

SEC 7. This act shall be in force from and after its passage.

On the 24th day of August, 1875, the said Willamette Woolen Manufacturing Company executed and delivered to the Bank of British Columbia a mortgage to secure the payment of seven promissory

notes, amounting to eighty-five thousand dollars. This mortgage includes a large amount of property, consisting of real estate, mills, etc., belonging to the company, and among other clauses contains the following:

"Also the power to bring water from the Santiam river to any place or places in or near Salem, the same to be brought as far as practicable through the channels or the valley of Mill creek, and for such purposes may enter upon lands and also said creek and do all things proper and suitable for a safe and economical conveyance of water as aforesaid; also the exclusive right to the hydraulic powers and privileges created by the water from the Santiam river; also all the rights and powers of the said party of the first part (said company) in and to the water rights and powers and privileges obtained under its charter or articles of incorporation, including all rights and property of kindred character acquired by said party of the first part in any way or from any person since the incorporation aforesaid."

This suit was brought by the Bank of British Columbia to foreclose said mortgage for a balance of $15,600 remaining unpaid upon said note, and to the bill, the Willamette Woolen Manufacturing Company filed an answer and plea, which plea is as follows:

"And for a further defense and plea to said bill of complaint: Said defendant, the Willamette Woolen Manufacturing Company, alleges that it is now and continuously for more than twenty years next last past has been incorporated under and by virtne of an act of the Legislative Assembly of the Territory of Oregon, passed Dec. 17th, 1856, and entitled "An Act to incorporate the Willamette Woolen Manufacturing Company." That the fifth section of said act provides as follows, viz:

"SEC. 5. Said corporation shall have power to bring water from the Santiam river to any place or places in or near Salem, to be brought as far as practicable through the channel or valley of Mill creek, and for such purpose may enter upon lands and also said creek, and do all things proper and suitable for a safe, direct and economical conveyance of water as aforesaid, but said corporation shall do no unnecessary injury to private property, and shall be answerable in damages to any person whose property is injured by its acts."

"That the rights and powers enumerated in said section five of said Act, and thereby conferred upon defendant, constitute the personal and exclusive franchise of defendant as such corporation, and that said mortgage mentioned in plaintiff's bill of complaint included said franchise, and of right ought by this Honorable Court to be declared null and void and of no effect so far as the same includes said franchise. That it is necessary to the use, enjoyment and maintenance of

defendant's said franchise that defendant shall have and retain the exclusive use and enjoyment of all the property mentioned and described in plaintiff's mortgage set out in said bill of complaint which relates to the power to bring water from said Santiam river to said Salem."

Subsequently the plaintiff filed an amended bill, adding some parties as defendants, and it was agreed in effect that the answer and plea to the original bill should stand as though filed to the amended bill, and it was stipulated that the Court should pass upon and determine the following question, viz.: As to whether the right of the defendant the Willamette Woolen Manufacturing Company arising under section 5 of the Act of December 17, 1856, of the Territorial Legislature of Oregon, as modified by the other sections of said Act, was the personal and exclusive franchise of said corporation, and whether the same could be sold, aliened or mortgaged by the said corporation to any persons. The Court below overruled the said plea of the defendant, and determining the above questions in the affirmative, entered a decree for the foreclosure of said mortgage and the sale of the property described therein, and accordingly the said property, including the franchise of defendant created by section 5 of said Act, was sold by the master and purchased by Wm Reid.

ERRORS ASSIGNED.

The Court below erred

1st, In holding that said mortgage was valid as to the franchise created by said section 5 of said act.

2d, In entering a decree for the sale of said franchise.

3d, In determining said question in the affirmative.

4th, In holding that said corporation had power to divest itself of its corporate franchise by mortgage, sale, or otherwise, without the consent of the Legislature of Oregon.

ARGUMENT.

Corporations have none of the elements of sovereignty, and can have and exercise only such powers as are expressly conferred on

them by the Act of Incorporation and such implied powers as are necessary to enable them to perform their prescribed duties.

Black vs. *Delaware & Raritan Canal Co.*, 22 N. J. Eq. 130.
Thomas vs. *Railroad Co.*, 101 U. S., 71.

No power is conferred by the Legislature upon the Willamette Woolen Manufacturing Co. to transfer its charter or divest itself of the franchise created by said Act. This corporation was established "for the purpose of creating and improving water powers and privileges and manufacturing." It is empowered to "bring water from the Santiam river to any place or places in or near Salem, to be brought as far as practicable through the channel or the valley of Mill Creek."

It has "power to purchase, receive and possess lands, goods, chattels and effects of every kind, the same to use and dispose of at pleasure"; and said act further provides that said corporation "shall have the exclusive right to the hydraulic powers and privileges created by the water which it takes from the Santiam river, and may use, rent or sell the same or any portion thereof as it may deem expedient." Let it be noticed that said act makes no provision for "*assigns*," and therefore said corporation cannot merge itself into any assigns or confer upon them its corporate powers and functions. The power to take and dispose of lands, goods and chattels contains no implication of a power to dispose of its franchise, but on the contrary implies a *jus disponendi* of something which the corporation acquires, not only after its existence, but after it goes into operation—whatever it can buy it can sell. The *exclusive* right to the hydraulic powers and privileges created by the Santiam water is vested in said corporation, and it is empowered, not to sell the right to take the water, but to sell the hydraulic powers and privileges *created* by the water. The power to sell the product of a thing does not imply the power to sell the thing itself. The specification in the Act of what the corporation may sell is inconsistent with the absolute right to sell everything. *Inclusio unius est exclusio alterius.* Assuming that the Court may take judicial notice of what is a fact, that the Santiam is a navigable river, the power to divert its waters for the purposes indicated in said Act is a special favor or privilege granted by the Legislature to the "Willamette Woolen Manufacturing Company." The Legislature did not intend by this Act to grant to everybody the right to divert the waters of the Santiam.

Accompanying, and as a part of this grant, are certain liabilities and obligations imposed upon the company, from which it cannot discharge itself without the consent of the Legislature. Practically the right of eminent domain is given to this company. It has the right, in order to carry out the purposes of its organization "*to enter upon lands and also said creek*," "do all things proper and suitable for a safe, direct and economical conveyance" of the water of the Santiam river to Salem, but "it shall do no unnecessary injury to private property and shall be answerable in damages to any person whose property is injured by its acts." This means that the Willamette Woolen Manufacturing Company may take private property for its use upon paying a just compensation therefor. This Court has decided in the case of *Head* vs. *The Armstrong Manufacturing Co.* 113 U. S., 9, that the Legislature had the constitutional power to confer this right upon a manufacturing company. This is an essential part of the franchise of the defendant corporation, and the question is—can this corporation, by the action of its directors, confer this right of eminent domain upon the Bank of British Columbia, a foreign corporation, or upon Wm. Reid, a private individual, without the consent or authority of the Oregon Legislature? There can hardly be room for controversy upon this subject. It is to be observed that rules and decisions arising out of or under general incorporation Acts are inapplicable to this case, because the defendant corporation was created by a special act of the Legislature of Oregon, and except as otherwise provided in said act, its powers are to be determined by the principles of the common law. Blackstone says, Vol. 1, page 472, that the consent of the King is absolutely necessary to the erection of a corporation, and the consent of the Legislature is equally necessary in this country. If it be true that the Willamette Woolen Manufacturing Company could transfer its franchises to the Bank of British Columbia, then said company could erect said bank into a manufacturing corporation with the right of eminent domain without the consent of the Legislature. Whatever may be said of the decisions of other Courts, it seems to be the settled doctrine of this Court that a corporation cannot transfer, so as to invest individuals or other corporations with, its corporate franchises.

The case of *The Memphis and Little Rock R. R. Co.* vs. *Berry et al.*, 112 U. S., 609, appears to be conclusive upon this subject,

unless a distinction can be made between the corporation defendant in this case and a railroad company. That was a case where a railroad company mortgaged its charter, franchises, etc., for its debts, which mortgage was foreclosed and the purchasers, under the decree of foreclosure, having organized themselves into a new corporation with the ownership of the property mortgaged, claimed an exemption from taxation upon the ground that the act organizing the mortgagor company so provided, and also provided that said company should have the right to borrow money "on the credit of the company and on the mortgage of its charter and works." This Court decided against the claim of the new company upon the ground that it was "an unbending rule that a grant of corporate existence is never implied," and then adds: "The application of this rule is not avoided by the claim that the present is not the case of an original creation of a corporate body but the transfer by assignment of a previously existing charter and of the right to exist as a corporation under it.

The difference is one of words merely. The franchise of becoming and being a corporation in its nature is incommunicable by the act of the parties and incapable of passing by assignment. The franchise to be a corporation, said Hoar J, in *Cone* vs. *Smith*, 10 Allen 448, 455, "clearly cannot be transferred by any corporate body of its own will." Such a franchise in its own nature is not transmissible.

In *Hull* vs. *Sullivan*, R. C. 21 Law Rep., 138 (2 Red. Amer. R. Cas. 621, 1 Brunner collected Cas. 613), Mr. Justice Curtis said: "The franchise to be a corporation is, therefore, not a subject of sale and transfer unless the law by some positive provision has made it so and pointed out the modes in which such sale and transfer may be effected." Let it be noticed that no power is conferred upon the Willamette Woolen Manufacturing Co. to borrow money or mortgage its property; but this power probably may be inferred from its power to make contracts. But certainly the power to mortgage or sell its charter and franchise cannot be inferred from its power to contract.

The case of the R. R. Co (*supra*) is, therefore, much stronger than this case to show the transfer of a franchise; for in that case express power was conferred to mortgage "the charter" of the company. But in this case there is no such express power, nor anything in the Act creating the corporation from which such a power can be inferred.

Louisville and N. R. Co. vs. *Palmer*, 109 U. S., 244.

Wilson vs. *Gaines*, 103 U. S., 417.

Morgan vs. *Louisiana*, 93 U. S., 217.

The above are cases in this Court all tending to show that the franchise and immunities of a corporation are not assignable without legislative authority. In the case of *Thomas* vs. *R. R. Co.* 101 U. S., 71, in an exhaustive opinion, Mr. Justice Miller, speaking for this court, holds that a lease of its franchises by the R. R. Co. was *ultra vires*. He says, referring to the Act of the Legislature organizing the company, and by which it was empowered to make contracts with other corporations: "But it is impossible under any sound rule of construction to find in the language used a permission to sell, lease or transfer to others the entire road, the rights and franchises of the corporation. To do so is to deprive the company of the power of making those contracts which this clause confers and of performing the duties which it implies." Mr Justice Bradley says in *Branch* vs. *Jesup*, 106 U. S., 468: "We do not, in the slightest degree, disaffirm the general rule that a corporation cannot dispose of its franchises to another corporation without legislative authority." Recurring to the act organizing the corporation defendant, it will be seen that section 6 thereof, confers upon said corporation the exclusive right to the hydraulic powers and privileges created by the water it takes from the Santiam river, with the right to use, rent or sell the same, as it may deem expedient.

Possibly and presumably this corporation has sold or rented water rights, put itself under obligations to furnish water in definite quantities; to build and keep in repair dams, gates, etc., and if its franchises have passed under said mortgage and sale, it is without any power to fulfill its obligations or perform the duties which the law implies that it should perform in the exercise of its corporate functions.

Says the Chancellor in the case of *Black* vs. *D. and R. Canal Co.* 22 N. J. Eq., 399: "It may be considered as settled that a corporation cannot lease or alien any franchise or any property necessary to perform its obligations and duties to the State without Legislative authority." And he cites numerous decisions in

support of this doctrine. He further says: "This rule is founded on reason and principle. The franchises granted by the State are often parts of the sovereign power delegated to a subject, and always privileges to which other citizens are not entitled. In these grants the State is supposed to regard the character of the grantee, as the guard and restrictions placed upon the corporation when the grant is, by a charter to persons, continually changing by transfer of stock." Every corporation, manufacturing as well as transportation, is under an obligation to the State to exercise any sovereign power or exclusive privileges granted to it under the guards and restrictions imposed with the grant, and it cannot shift this obligation to another; nor can it divest itself of this duty without the consent of the Legislature.

Judge Sawyer who decided this case in the Court below, decreed, Record, page 31, that "The Willamette Woolen Manufacturing Company did have full authority and power to make and execute the mortgage now here sought to be foreclosed, and that it conferred upon the plaintiff corporation by said mortgage a lien upon all its right and power under said Territorial Act to take water from the Santiam river, in and upon its franchise touching the taking, carrying and using of said water and all the rights, priviliges and uses incident thereto." No written opinion was filed with this decision, but it is understood that the Judge undertook to distinguish this case from the railroad cases, upon the ground that railroad companies were *quasi* public corporations and that the defendant corporation herein was not of that description, that is, if persons are incorporated to build and operate a railroad, they cannot transfer their franchise, but if they are incorporated to build and operate mills, factories and water powers, they may transfer their franchise. This distinction, it is submitted, is not sound in principle or supported by the authorities. To bring the water of the Santiam river to the Capital of the State is an enterprise in which the public is or may be greatly interested.

Numerous mills and factories may be dependent upon this water for motive power, and their existence and use are clearly of advantage to large numbers of people besides their owners, and it may be that the City of Salem depends upon this water to supply its citizens, and the State to supply its public institutions.

Mr. Justice Gray in delivering the opinion of the Court in the case of *Head* vs. *Amoskeag Manufacturing Co.* (*supra*), says: "It has been held in many cases of high authority that special acts of incorporation granted by the Legislature for the establishment of dams to increase and improve the water power of rivers and navigable waters for mechanical and manufacturing purposes, are for a public use," and he cites the following authorities:

Scudder vs. *Trenton Delaware Falls Co.*, Saxt. 694, 728, 729.

Boston and R. Mill Corp. vs. *Newman*, 12 Pick. 467.

Hazen vs. *Essex Co.*, 12 Cush., 475.

Cone vs. *Essex Co.*, 13 Gray, 239, 251, 252.

Hankins vs. *Lawrence*, 8 Blackf. 266.

Great Falls Manf'g. Co. vs. *Fernald*, 47 N. H., 444.

Certainly the Act in question falls within the scope of these authorities. If the taking of lands by a mill company is a taking for public use as seems to be decided in *Head* vs. *The Amoskeag Manf'g Co.*, then such mill company must be a *quasi* public corporation, and as to its right to transfer its franchise not different from railroad corporations. When a corporation undertakes to create or improve water powers for the general community, as in the case of the defendant corporation, its work, in the language of Lord Hale, is affected "with a public interest and ceases to be *juris privati* only."

Judge Sawyer's distinction seems to be in conflict with the principles laid down by this Court in *Munn* vs. *Illinois*, 94 U. S., 113, in which railways, elevators, warehouses, etc., are put upon the same footing as affecting a public interest. Mr. Chief Justice Waite, in delivering the opinion of the Court in that case says: "Property does become clothed with a public interest when used in a manner to make it of public consequence and affects the community at large, when, therefore, one devotes his property to a use in which the public has an interest, he in effect grants to the public an interest in that use and must submit to be controlled by the public for the common good to the extent of the interest he has thus created."

This is a sound and salutary rule, and in view of the multitudinous corporations that dominate the country—ought not to be relaxed.

Surely the public has an interest in the diversion of the waters of the Santiam river through a large extent of country to the Capital of the State.

Judge Sawyer's distinction opens the door to endless doubts and controversies, for it is very difficult to determine as to private corporations where the exclusively private right ends and the *quasi* public nature begins. The safer and better rule is, that corporations created by the Legislature have no power to invest others with their franchises, and then creditors and all concerned will know upon what they can depend. The weight of authorities is against the opinion of the court below upon this point. *Carpenter* vs. *Black Hawk Gold Mining Co.*, 63 N. Y., 50, is a case where the corporation mortgaged its property and franchises to Trustees, and the Court, in deciding upon the validity of the mortgage, said: "A corporation without some statute authorizing it, can neither sell or mortgage its franchises. Hence this mortgage, so far as it purports to convey the franchises of the company, is simply inoperative. The trustees therein named could not sell or give title to the franchise, and there was no occasion for any interference of a Court of Equity to prevent such attempted sale." Clearly, if a mining corporation cannot transfer its franchise, a corporation organized to create and improve water powers cannot, for the latter affects public interests much more than the former.

Cass vs. *Manchester Iron & Steel Company*, 9 Fed. R., 640, is a case in which it was decided that the corporation had no power to lease its franchise. McKennan, Judge says: "We are of the opinion then that the charter contemplates and authorizes the prosecution of the business described in it by the corporation itself, by the direct agency and under the supervision, management and administration of the corporate officers whom the stockholders may select for the purpose, and that a contract which involves a relinquishment of this faculty or a transfer of it to others is beyond the scope of the power of the corporation."

Salem Mill Dam Co. vs. *Ropes*, 6 Pick 32, is a case in which Chief Justice Parker applies the general law as to corporations to a Milling Co. He says: "The power of corporations is derived only from the act, grant, charter, or patent by which they are created. In this com-

monwealth the source and origin of such power is the legislature and corporations are to exercise no authority except what is given by express terms or necessary implication by that body."

Whittenton Mills vs. *Upton et al*, 10 Gray, 582, is a case in which it was held that a manufacturing corporation could not form a partnership upon the ground, that such a relation invested others than the corporate authorities with the exercise of its corporate franchises.

Stewart vs. *Jones*, 40 Missouri, 140, is a case in which it was held that the franchise of Jones' Commercial College, a corporation under the laws of Missouri, could not be sold upon execution.

Richardson vs. *Sibley*, 10 Allen, 65, is a case in which it was held that a horse railroad company could not lease its franchise though the act by which it was incorporated contained clauses relative to "lessees and assigns." The same decision is made in *Middlesex R.* vs. *Boston and Chelsea R*, 115 Mass. 347. *Thomas* vs. *Armstrong*, 7 Cal., 286, is a case in which it is decided that a ferry franchise was not the subject of levy and sale upon execution.

In *Mahoney* vs. *Spring Valley Water Co.*, 52 Cal., 163, it is decided that a water company corporation cannot sell its right to take private property to another water company corporation.

Abbott vs. *American Hard Rubber Co.*, 33 Barbour, 580, *McCullough* vs. *Moss*, 5 Denio, 565 are authorities to the same effect and the only case found which seems to conflict with these cases is that of *Miners Ditch Co.* vs. *Zellerbach*, 37 Cal., 544. That case, however, is clearly distinguishable from this. That was an action of ejectment brought by the Miners' Ditch Co. against Zellerbach for the possession of certain water ditches. These ditches had been sold by the Miners' Ditch Co. to another corporation known as the Eureka Lake Water Co., and by the latter company mortgaged to Zellerbach and bought in by him on execution, upon which he took possession and made large and valuable improvements upon said ditches. There were circumstances of bad faith, hardship and injustice about that case which induced Judge Sawyer, who delivered the opinion of the Court, to construe the law as favorably as he could for the defendant.

But the deed of the Miners' Ditch Co. in that case did not purport to convey anything but certain specified properties of the company.

It did not purport to convey the franchise of the Mining Ditch Co.

Judge Sawyer in his opinion in this case says: "A corporation may forfeit its franchise by non use, but a *conveyance of property of the kind in question is not a transfer of its franchise.*" The District Judge in his opinion well says: "But the ditches and water rights were no part of the franchises; they were not given by the legislature. The whole property was situate on the public domain and could be acquired only by appropriation or purchase. The Miners' Ditch Co. did not acquire any right to or property in the ditches or water right by virtue of its incorporation. * * The case is entirely different from that of a railroad company where a right of way and other special rights in the nature of property are granted by the charter." Now the mortgage under consideration undertakes in express words to convey the franchise of the Willamette Woolen Manufacturing Co. In this it clearly differs from the conveyance involved in the Ditch Co.'s case.

Moreover the right to divert the water of the Santiam river was a special right conferred upon defendant corporation by its charter, a right which it is thought a private individual cannot enjoy without the consent of the Legislature. Again, the right of eminent domain is derived by the defendant corporation through its charter, and certainly this is a right which a private citizen cannot exercise. These considerations clearly distinguish this case from the case in 37 Cal.

In that case the Miners' Ditch Co. was organized under a general incorporation law of the State, and took nothing thereunder but the right to exist, but in this case the corporation is created by a special act of the Legislature, which in the act of its creation confers upon the corporation valuable and important rights and powers which private citizens of the State cannot possess or exercise. It is not claimed in this case that the Willamette Woolen Manufacturing Company had no power to mortgage its mill sites, mills and machinery with the necessary water power to use them or any property that it acquired by purchase after its organization, but it is claimed that it had no power to mortgage its right to take water from the Santiam river, its right to appropriate private property, its right to

make and keep in repair dams, gates and other necessary structures, and to control the flowing of the water through Mill creek from the Santiam river to Salem or other points where it is used, and the right to use, rent or sell the hydraulic powers and privileges created by said water not heretofore used, rented or sold, because these latter rights are conferred upon the corporation by its charter, and as to these the said mortgage is *ultra vires* and void. No case has been found, and it is believed that none can be found, in which it is decided that a corporation and especially one created by a special act of the Legislature, can sell and transfer its franchise.

It is considered unnecessary to cite otherwise than as above, the numerous federal and State decisions in which it has been held that railroad corporations could not transfer their franchise without legislative authority, for it is very clear that that is no longer an open question in this court.

To the suggestion, if it is made, that this defendant corporation cannot set up the plea of *ultra vires* in this case because the contract in question has been executed, it is answered, that this suit is to enforce that part of the contract which remains executory. It is to enforce a contract which the corporation made to sell its franchise.

The case of *Thomas* vs. *The Railroad Co., supra*, is exactly in point. There, as in this case, the contract was partly executed. Mr. Justice Miller says: "But what is sought in the case before us is the enforcement of the unexecuted part of this agreement. So far as it has been executed, namely, the four or five years of action under it, the accounts have been adjusted and each party has received what he was entitled to by its terms." * * * "Not only so, but it is a contract forbidden by public policy and beyond the power of the defendant to make. Having entered into the agreement it was the duty of the company to rescind or abandon it at the earliest moment." But it is submitted that this attempted transfer of its franchise by defendant corporation is to use the language of Judge Sawyer in 37 Cal., *supra:* "An act not within the scope of the powers of the corporation to perform it under any circumstances or for any purpose."

And he further says that when an act is *ultra vires* in this sense, "it is generally if not always void *in toto*, and the corporation may avail

itself of the plea." This case differs from a case where a corporation makes a contract with a person who may not know whether or not the contract is within the corporate power. As for example, when a bank authorized to purchase land for a banking house buys it for purposes of speculation. This is a misuse of an admitted power, and the bank may not plead its own wrong in avoidance of the contract, but in this case everybody was bound to know that the defendant corporation could not sell its franchise as much as everybody is bound to know that a person cannot make a legal contract to take his own life. Some courts upon this subject have illustrated by their loose decisions the old adage that "hard cases make poor law," but this court maintains its consistency upon principle.

Chief Justice Marshall, in the case of *Head* vs. *The Providence Ins. Co.*, 2 Cranch, 127, says, speaking of the corporation defendant in that case: "It may correctly be said to be precisely what the incorporating Act has made it, to derive all its powers from that Act, and to be capable of exerting its faculties only in the manner which that Act authorizes. Chief Justice Taney in *Bank* vs. *Earle*, 13 Peters, 519, and *Perrine* vs. *Ches. & Ohio R. Co.*, 9 How, 172, forcibly affirms the same doctrine.

Pearce vs. *Madison and Ind. R. R. Co.*, 21 How, 441, was a case in which a suit was brought against said corporations upon promissory notes given by them for a steamboat and held by an endorser, and the Court decided that the plaintiff could not recover because the corporation had no capacity to make the contract. And in *Thomas* vs. *the Railroad*, *supra*, Mr. Justice Miller, in answering the argument of counsel that a corporation might do any act not prohibited by its charter, says: "We do not concur in this proposition. We take the general doctrine to be in this country, though there may be exceptional cases, and some authorities to the contrary, that the powers of corporations organized under legislative statutes are such and such only as those statutes confer." It must be admitted that if the defendant corporation can assign and transfer its franchise it can do anything. There is no limitation upon its power.

It can change the purpose and object of an Act of the Legislature. Some cases can be found in which it is held that the plea of

ultra vires by a corporation will not be allowed when it would work an injustice; but in those cases the contracts were such that the corporation could perform them. There was nothing in the contracts wrong in themselves, and they were objected to upon the ground that the corporation had exceeded its limits in the exercise of a given power. In this case the contract cannot be enforced, because it is contrary to public policy. The contract in itself is inherently vicious. "It is," to use the language of Justice Miller in *Thomas* vs. *Railroad*, *supra*, "a contract forbidden by public policy and beyond the power of the defendants to make." To illustrate: Suppose that the Legislature elects A to an office, and thereupon he agrees to sell such office to B for $1000, which B pays.

Nobody will pretend that B can enforce this contract, though it is clearly unjust for A to refuse to perform, and, at the same time, retain the money. So here: the Legislature of Oregon appointed the Willamette Woolen Manufacturing Co. to exercise certain special rights and privileges, which constitute its franchise and which is in the nature of an office, and it is as much against public policy for said company to contract to sell said franchise as it would be for A to contract to sell his office in the case supposed. This distinction between a contract merely unauthorized and a contract against public policy must have been overlooked by the Court below.

Admitting that a corporation may wind up its affairs and dissolve, there is nothing in this case to show that any such purpose was contemplated by the Willamette Woolen Manufacturing Co.

According to the recitals in the mortgage, it was executed by the President and Secretary of the company by the authority of the Directors; but there is nothing to show that the other stockholders were informed of or assented to this act of the Directors.

It cannot be that a corporation can be dissolved without the consent of the stockholders or a majority of them. The consent of the stockholders in a corporation to its annihilation cannot be inferred from any act of the Directors.

Corporations existing by a special Act of incorporation can only be dissolved, First, By an act of the Legislature; Second, By the loss of their members; Third, By surrender of their charters;

Fourth, By a forfeiture of their franchises. The insolvency of a corporation does not extinguish its legal existence. *Boston Glass Manufactory* vs. *Langdon*, 24 Pick., 49. Nor does the assignment or sale of the corporate property necessarily dissolve the corporation.

Barclay vs. *Tolman*, 3d Ed. Ch., 128.

Bank of Maryland, 6 Gill and Johns, 205.

Farmers' Bank of Delaware vs. *Beaston*, 7 Gill and Johns, 421.

Chancellor Kent says in *Brinkerhoff* vs. *Brown*, 7 John. Ch. 224: "It does not follow that a corporation is dissolved by the sale of its visible and tangible property for the payment of debts, and by the temporary suspension of its business, so long as it has the moral and legal capacity to increase its subscription, call in more capital and reassume its business." In the case of *Sullivan* vs. *Triunfo M. Co.*, 39 Cal., 468, the Court says: "The sale of the mines, etc., did not dissolve the corporation. The ownership of property is not essential to the existence of a corporation. The general law provides the mode in which a corporation may dissolved, but the Court cannot treat it as already dissolved, because the condition or business arrangements are such that it will be necessary or proper for it to institute proceedings for its dissolution."

Says the Court of Appeals, 59 N. Y., 552: "To effect a dissolution of a corporation there must be the judgment of a Court of competent jurisdiction declaring it dissolved." It seems reasonable that the stockholders of the defendant corporation have a right to be heard somewhere before it is determined that their corporate rights have ceased to exist. It is not a necessary conclusion from the mortgage in this case that the defendant corporation thereby mortgaged all its property, and the fact that it appears in this suit to contest the validity of said mortgage as to its franchise, is evidence enough that it still has vitality and a legal existence.

To hold this mortgage good as to the franchise therein described is practically to dissolve the defendant corporation without the consent of the stockholders. Without its franchise this corporation cannot move or live or have a being. This corporation by its directors, if the mortgage is good to the extent claimed, has agreed to commit suicide, and the Court is called upon to enforce the agreement.

It is submitted that no precedent can be found for the dissolution or destruction of a corporation in this way.

The argument that this defense is inequitable or unjust is not entitled to much if any weight. The mortgage was given for eighty-five thousand dollars, all of which had been paid when this suit was commenced, excepting about $16,000.

It will be observed that the mortgage embraces a large amount of real estate, including mills, factories and machinery, and it may be supposed that the purchaser under the decree, obtained a full equivalent for the $16,000, which he paid without including the franchise of the company. It is possible to suppose that the stockholders of this corporation have some claim upon the equities of this case.

It is respectfully submitted that the decree of the Court below, in so far as it decides that said mortgage was a lien upon all the right and power of the defendant corporation under said Territorial Act to take water from the Santiam river, and in and upon its franchise touching the taking, carrying and using of said water, and all the rights, privileges and uses incident thereto, and directs and authorises the sale of the same, ought to be reversed.

GEO. H. WILLIAMS,
for Appellant.

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IN THE

Supreme Court of the United States

WILLAMETTE WOOLEN MANUFACTURING COMPANY, Appellant,

vs.

THE BANK OF BRITISH COLUMBIA, Appellee.

BRIEF AND ARGUMENT FOR THE APPELLEE

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IN THE

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THE WILLAMETTE WOOLEN MANUFACTURING COMPANY, Appellant,
vs.
THE BANK OF BRITISH COLUMBIA, Appellee.

Brief and Argument for the Appellee.

This is an appeal from a decree of the Circuit Court of the United States for the District of Oregon.

Statement of the Case.

The appellant was created and declared a body corporate by an act of the Territorial Legislature of the Territory of Oregon, passed on the 17th day of December, 1856, entitled "An act to incorporate the Willamette Woolen Manufacturing Company," (which act is printed in full as an appendix hereto.)

In the first section of said act the purposes for which such corporation is formed are declared to be the "creating and improving water powers and privileges and manufacturing." By section two power is given to it to "purchase, receive and possess lands, goods, chattels and effects of every kind, the same to use and dispose of at pleasure, to contract and be contracted with, to sue and be sued."

As a corporation with authority, among other things, to

create and improve water powers and privileges, the legislature, by section five, granted to it the right to take water from the Santiam River "to be brought as far as practicable through the channel or valley of Mill Creek," with authority to "enter upon lands and also said creek, and to do all things proper and suitable for a safe, direct and economical conveyance of water," with a provision that such corporation should "do no unnecessary injury to private property and" should "be answerable in damages to any person whose property is injured."

And by the sixth section of said act it was provided: "Said corporation shall have the exclusive right to the hydraulic powers and privileges created by the water which it takes from the Santiam River, and may use, rent or sell the same, or any portion thereof, as it may deem expedient."

The corporation under the grant made by the fifth section of said act acquired the necessary right of way and conducted water from the Santiam river to Salem for manufacturing purposes. A bill was filed by the appellee to foreclose a mortgage made by the appellant corporation in favor of the appellee, securing the payment of certain promissory notes made by the appellant to the appellee. The said mortgage, among other properties, embraced the following:

"Also the power to bring water from the Santiam river to any place or places in or near Salem, the same to be brought as far as practicable through the channel or the valley of Mill creek, and for such purpose may enter upon lands and also said creek, and do all things proper and suitable for a safe and economical conveyance of water as aforesaid; also the exclusive right to the hydraulic powers, privileges, and to the water from the Santiam river; also all rights and powers of the said party of the first part in and to the water, rights, powers, and privileges obtained under its charter or articles of incorporation, including all rights and property of any kind and character

acquired by said party of the first part in any way from any person since the incorporation aforesaid."

The appellant appeared in the suit and filed an answer in which it alleged that it was, and had been continuously for more than twenty years, incorporated under the said act of December 17th, 1856.

That the fifth section of said act provides as follows, viz.:

"SEC. 5. Said corporation shall have power to bring water from the Santiam river to any place or places in or near Salem, to be brought as far as practicable through the channel or valley of Mill creek, and for such purpose may enter upon lands and also said creek, and do all things proper and suitable for a safe, direct and economical conveyance of water as aforesaid, but said corporation shall do no unnecessary injury to private property, and shall be answerable in damages to any person whose property is injured by its acts."

That the rights and powers enumerated in said section five of said act, and thereby conferred upon defendant, constitute the personal and exclusive franchise of defendant as such corporation, and that said mortgage mentioned in plaintiff's bill of complaint includes said franchise, and of right ought by this honorable court to be declared null and void, and of no effect, so far as the same includes said franchise.

The appellee filed exceptions to said answer, and afterwards and before the next rule day filed a supplemental bill. No answer or other pleading having been filed to the supplemental bill, the parties by their respective attorneys, on the 21st day of October, 1881, entered into a stipulation which, omitting the preliminary recitals, is as follows:

"Now, therefore, it is hereby specially stipulated and agreed that there may be presented to the court this day and decided this — the following question, the same being the only matter in defense or avoidance to be tendered by

said defendant corporation, viz., as to whether the right of the defendant, the Willamette Woolen Manufacturing Company, arising under section five of the act of December 17, 1856, of the Territorial Legislature of Oregon, as modified by the other sections of said act, was the personal and exclusive franchise of said corporation, and whether the same could be sold, aliened, or mortgaged by the said corporation to any other person."

The cause was heard on the following day, and upon full consideration, the court (Sawyer, judge,) adjudged and decreed that the appellant "did have full authority and power to make and execute the mortgage now sought to be foreclosed, and that it conferred upon the appellee by said mortgage a lien upon all its rights and powers under said Territorial act to take water from the Santiam river and upon its franchise touching the taking and conveying and using of said water, and all its rights, privileges, and uses incident thereto;" and the court found accordingly for the appellee that there was $15,606.50, with interest due at the rate of seven per cent. from 30th April, A. D. 1881, $11,242.58, until payment to the appellee.

From that decree this appeal is taken.

The Question Stated.

Did the appellant have power to mortgage to the appellee the right conferred upon it by the fifth section of its charter to take water from the Santiam River together with its ditch used for conducting the same, and the right of way necessary for the maintenance of such ditch?.

ARGUMENT.

I. In the answer of the appellant, the rights and powers conferred upon it by said fifth section are alleged to constitute its "personal and exclusive franchises."

But that which was mortgaged by the appellant was in

no sense a franchise. In Morgan *v.* La., 93 U. S., 217 and 223, Mr. Justice Field, speaking for the court, said:

"Much confusion of thought has arisen in this case and in similar cases from attaching a vague and indefinite meaning to the term "franchises." It is often used as synonymous with rights, privileges, and immunities, though of a personal and temporary character; so that if any one of these exists, it is loosely termed a "franchise," and is supposed to pass upon a transfer of the franchises of a company But the term must always be considered in connection with the corporation or property to which it is alleged to appertain."

And after defining the franchise of a railroad corporation, he continued:

"They are positive rights or privileges without the possession of which the road of the company could not be successfully worked."

Applying this definition to the grant under consideration, if there was any franchise granted by said section it was only the "right to enter upon lands," &c. Whether the right of eminent domain was exercised by the corporation or not does not appear; and however that may be, such franchise was of a temporary character, and when the necessary right of way was acquired was exhausted, and the right of way and the right to take water from the Santiam (a navigable stream) were the property of the corporation, as distinguishable and separable from its franchises.

The appellant can go on without limitation to create and improve water powers and privileges from any streams of water acquired by purchase elsewhere, and to carry on the manufacturing business. It can buy and sell lands, goods, and chattels; but it has parted with its right to take water from the Santiam River, and with the means provided for conducting the same for manufacturing purposes.

II. The corporation had power to dispose of such prop-

erty under the express provisions of its charter. By section 2 of its charter it was empowered to purchase, receive, and possess lands, goods, chattels, and effects of every kind, and to dispose of them at pleasure. And whatever rights to the beneficial use of the water of the Santiam River the corporation acquired under said fifth section, whether the same was property as distinguishable from its franchises or not, it was expressly empowered to sell in whole, or in part, by the sixth section of its charter.

The power to sell the exclusive right to the whole of the hydraulic powers and privileges created by the water to be taken from the Santiam River, conferred by said section, necessarily includes the power to sell the right to take the water, together with the means of conducting the same, to the place where it is to be used.

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III. The power to mortgage is co-extensive with the power to alienate absolutely. The power of a corporation to sell its property and franchises includes the power to mortgage the same. Thus, authority given to a railroad company by special act of the legislature to transfer all its property and rights to another corporation named, confers upon it authority to mortgage its property and rights to such other corporation. (East Boston Freight Co. *v.* Eastern R. R. Co., 13 Allen, Mass., 422.)

A railroad charter conferring the right to "acquire, alien, transfer, and dispose of property of every kind," confers the power to mortgage such property. (McAllister *v.* Plant, 54 Miss., 106; Sessions *v.* Bacon, 23 Miss., 272; Stone *v.* Montgomery, 35 Miss., 83.)

IV. Every corporation, unless expressly or impliedly prohibited, has the same power that an individual has to incur debts and to pledge its property, both real and personal, to secure their payment. Every corporation, unless expressly or impliedly prohibited, has the same power that

an individual has to sell its property, either absolutely or conditionally.

A corporation has power to mortgage its real estate as an incident to the power to acquire and hold and to make contracts in regard to it when such power is not denied, and is not inconsistent with the public obligations of the corporation. (Aurora Agr. & Hort. Soc. *v.* Paddock, 80 Ill., 263; Angell & Ames on Corporations, 153; Curtis *v.* Leavitt, 15 N. Y., 9; Thompson *v.* Lambert, 44 Iowa, 239; Vanasdell *v.* Watson, 65 Ind., 176.)

It may be said that the *jus disponendi* of corporations is at common law unlimited. (Jones on Mortgages, 3d ed., vol. 1, sec. 124.)

Private corporations have an implied power (1) to contract debts, (2) to borrow money, (3) and to execute a negotiable bill, note, or bond, and secure by mortgage.

Daniel Neg. Ins., vol., 3d ed., sec. 382, and cases cited in note thereto. So corporations empowered to buy and sell lands and goods. Ibid, sec. 383; Clark *v.* Farmers' Woolen Mfg. Co., 15 Wend., 256; Fay *v.* Noble, 12 Cush., 1; Ketchum *v.* City of Buffalo, 4 Kern., 356.

Mr. Justice Campbell said, in delivering the opinion of court in the case of White Water Canal Co. *v.* Vallette, 21 How. (L. C. P. Co. ed.), p. 158: "It is well settled that a corporation without special authority may dispose of land, goods, and chattels, or of any interest in same as it deems expedient, and in the course of their legitimate business may make a bond, mortgage, note, or draft, and also may make a compromise with creditors, or any assignment for their benefit," &c.—citing Patridge *v.* Badger, 25 Barb., 146; Barry *v.* Merchants' Ex. Co., 1 Sandf., ch. 280; Beers *v.* Phœnix Glass Co., 14 Barb., 358; Danna *v.* Bank of the U. S., 5 W. & S., 223, and other cases.

In the case of the Commercial Bank *v.* Newport Mfg. Co., 35 Am. Dec., p. 172, it appearing that act of incorporation authorized the company to purchase real estate,

hemp, &c., and do whatsoever might be proper for effectuating those powers and promoting the legitimate ends of its being, it was held that it consequently had the implied power to deal on credit and even to borrow money within the sphere of its prescribed business, and, of course, the incidental resulting authority to bind itself by the usual evidences of credit, bills, and promissory notes. (State *v.* Commissioners, Mansfield, 57 Am. Dec., 413.

V. If it be conceded that rights in controversy were a part of the franchises of the appellant, it still had power to sell or mortgage the same.

In New Orleans, Spanish Fort & Lake R. R. Co. v. Delamore and Another, 114 U. S. Repts., 501, it was held by this court that a grant by a municipal corporation to a railway company of a right of way through certain streets of the municipality, with a right to construct its railroad thereon and occupy them in its use, is a franchise which may be mortgaged and passed to the purchaser at a sale under foreclosure of the mortgage.

Mr. Justice Woods, speaking for the court, said:

"In passing upon this question (the question as to whether the franchises of a railroad company are inalienable in Louisiana), it is necessary to bear in mind the distinction between the different classes of railroad franchises. This was stated by Mr. Justice Curtis in the case of Hall *v.* Sullivan, R. R. Co., 21 Law Reporter, 138 S. C.; Redfield, Am. R. R. Co. A. S., 621; 1 Brunner, 613, where he said 'The franchise to be a corporation is, therefore, not a subject of sale and transfer unless the law by some positive provision made it so, and pointed out the modes in which such sale and transfer may be effected, but the franchise to build, own and manage a railroad and to take tolls thereon are not necessarily corporate rights. They are capable of existing and being enjoyed by natural persons, and there is nothing in their nature inconsistent with their being assignable.'"

And then citing from the opinion of Mr. Justice Field in Morgan *v.* Louisiana, *supra*, his description of the franchises of a railroad company, he continues:

"We are of opinion that these franchises, which in the case just cited are described as necessary to the use and enjoyment of the property of a railroad company, are assignable in Louisiana, and that there is no warrant in the jurisprudence of that State for holding to the contrary."

* * * * * * * *

"The authority to mortgage the franchises of a railroad company necessarily implies the power to bring the franchises so mortgaged to sale, and to transfer them with the corporeal property of the company. It could not be held that when a mortgage on a railroad and its franchises was authorized by law that the attempt of the mortgagor to enforce the mortgage would destroy the main value of the property by the destruction of the franchises."

See also Ryan *v.* Aiken, 9 Lea (Tenn.), 609; Houston & Tex. C. R. Co. *v.* Sheiley, 54 Tex., 125; Carpenter *v.* Miles, 38 Cal., 335; Randolph *v.* Larned, 27 N. Y. Eq., at p. 561; Lippincott *v.* Alexander (27 Iowa, 460), 1 Am. R., p. 299; Bowman's Devisees *v.* Wathen, 2 McLean, 376; Felton *v.* Beall, 22 Vt., 170; Benson *v.* Myer, 10 Barb., 223; Ladd *v.* Chatard, 1 Minor (Ala.), 366; Lewis *v.* Intendant and Town Council Gainsville, 7 Ala., 85; Dundy *v.* Chambers, 23 Ill., 370; Middleton *v.* Egerton, 30 Vt., 182. In Billing *v.* Breining, 45 Mich., 70, it was held that the franchise of a corporation is property and transferable by the original grantee to others.

VI. The appellant is estopped from denying its power to mortgage the portion of its property in controversy. The contract upon which the suit was brought was an executed contract. The appellant received and seeks to retain the benefit of the loan secured by the mortgage, and to deprive the appellee of the benefit of its security, by setting up its alleged want of power to execute it.

Where a contract *ultra vires* has been made by a corporation and it has received the full consideration and appropriated the same so that it cannot be restored and the other party placed *statu quo*, the corporation will generally be bound by the contract the same as a natural person. Field on Corporations, 425; Green's Brice's *ultra vires*, 42–717; Cowell *v.* Springs Co., 100, U. S., 55; Morawetz on Private Corporations, sec. 86; Argenti *v.* City of San Francisco, 16 Cal., 265; Darst *v.* Gale, 83 Ill., 141; Bradley *v.* Ballard, 55 Ill., 417.

If the appellant was not authorized to mortgage the property in controversy, the State only could question the transaction. (Cowell *v.* Springs Co., 100 U. S., 55; Arthur *v.* Com. & R. B. R. of Vicksburg, 48 Am. Dec., 719; Moore *v.* Shappert, 22 W. Va., 282; Logan *v.* Vernen Greensburg, &c., R. R. Co., 90 Ind., 552; Toledo & Ann Arbor R. R. Co. *v.* Johnston, 49 Mich., 148; Pixley *v.* Roanoke Nav. Co., 75 Va., 320; Wallamet Falls, &c., Co. *v.* Kittridge, 5 Sawyer C. Ct., 44, and cases there cited in opinion by Judge Deady; Union Nat. Bank of St. Louis *v.* Matthews, (Sup. Ct. U. S.,) The Reporter, vol. 7, p. 9, 257; Elizabeth Academy *v.* Lindsay, 45 Am. Dec., 500; R. R. Co. *v.* R. R. Co., 45 Cal., 365; Hackett *v.* Wilson, The Pacific Reporter, vol. 6, p. 9, 659, and the following cases therein cited; People *v.* Duncan, 41 Cal., 508; Connor *v.* Paxson, 1 Blackf.; Edmundson *v.* DeKalb Co., 57 Ala., 101.)

In the case of State *v.* Com. Bk. of Manchester, 13 S. & M. 450, it was said that whether or not a corporation with a railway franchise attached to it has power to convey away the railway and the franchises attached is a matter between the State and the corporation with which third persons have nothing to do.

It is well said at page 499 of vol. 2, of the 5th ed. of Redfield on the Law of Railways, in a note on this case: "Much less should the corporation be allowed to shield

itself behind the violated rights of the State, of which no complaint is made, and thus escape the legitimate effects of its own contracts."

Respectfully submitted.

J. N. DOLPH.

APPENDIX.

AN ACT to incorporate the Willamette Woolen Manufacturing Company.

SECTION 1. Be it enacted by the Legislative Assembly of the Territory of Oregon that George H. Williams, Alfred Stanton, Joseph Watt, Joseph Holman, Daniel Waldo, William H. Rector, E. M. Barnum, J. G. Wilson, and J. D. Boon and their associates, stockholders in the joint-stock company known as the "Willamette Woolen Manufacturing Company," and their successors, are hereby declared a body corporate and politic, by the name and style of the "Willamette Woolen Manufacturing Company," for the purpose of creating and improving water-powers and privileges, and manufacturing; and the present organization of said joint-stock company shall continue until changed by said corporation.

SEC. 2. Said corporation shall have power to purchase, receive, and possess lands, goods, chattels, and effects of every kind, the same to use and dispose of at pleasure; to contract and be contracted with, to sue and be sued; to have a common seal, and the same to use and change at pleasure, and to ordain and establish such by-laws and regulations as it may deem expedient for its own government and the efficient management of its affairs consistent with the Constitution and laws of the United States and the laws of this Territory.

SEC. 3. The capital stock of said corporation shall not exceed two hundred thousand dollars, and shall be divided into shares of not less than one hundred dollars each, transferable as its by-laws may provide.

SEC. 4. Said corporation shall receive, possess, and enjoy all the property, interests, and rights of said joint stock company, and shall hold and have, and may enforce by